

# U.S.-EU TRADE AND INVESTMENT PARTNERSHIP NEGOTIATIONS

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## HEARING BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

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MAY 16, 2013  
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## **U.S.-EU TRADE AND INVESTMENT PARTNERSHIP NEGOTIATIONS**

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**THURSDAY, MAY 16, 2013**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON TRADE,  
*Washington, D.C.*

The Subcommittee met, pursuant to call, at 2:55 p.m., in room 1100, Longworth House Office Building, the Honorable Devin Nunes [Chairman of the Subcommittee] presiding.  
[The advisory of the hearing follows:]

# HEARING ADVISORY

## Chairman Nunes Announces Hearing on U.S.-EU Trade and Investment Partnership Negotiations

1105 Longworth House Office Building at 2:00 PM  
Washington, May 9, 2013

House Ways and Means Trade Subcommittee Chairman Devin Nunes (R-CA) today announced that the Subcommittee will hold a hearing on negotiations of a U.S.-EU trade and investment partnership agreement. The hearing will focus on the opportunities and challenges presented by the President's notification to Congress that he intends to negotiate such an agreement. **The hearing will take place on Thursday, May 16, 2013, in 1100 Longworth House Office Building, beginning at 2:00 P.M.**

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

### **BACKGROUND:**

The transatlantic economy is the largest and most integrated in the world, comprising 50 percent of global GDP and generating approximately \$5 trillion in total commercial sales each year. The European Union and United States account for 30 percent of world trade. Each day, \$2.7 billion of goods and services are traded bilaterally, supporting millions of jobs in both economies. Five of the top ten export markets for U.S. services are in Europe. Direct investment by the United States and the EU into each other's markets totals more than \$3.7 trillion. Europe is by far the largest destination for U.S. outbound investment, with Europe accounting for a roughly equal amount of U.S. outbound investment. In comparison, China ranks 12th as a U.S. investment destination, behind Belgium, France, Germany, Ireland, the Netherlands, Switzerland, and the UK, among others. This longstanding integration translates into significant U.S. jobs: approximately 15 million workers in the United States are employed as a result of transatlantic trade.

On March 20, 2013, President Obama notified Congress of his intent to enter into formal trade agreement negotiations with the EU, thus beginning a 90-day consultation period with Congress that will expire on June 18, 2013. The President's notification emphasizes that a U.S.-EU trade and investment agreement would address both traditional tariff barriers as well as important regulatory and other non-tariff barriers, including sanitary and phytosanitary barriers to U.S. agriculture exports. A U.S.-EU trade and investment agreement would also provide an opportunity to broaden and deepen cooperation on third-country issues.

In announcing this hearing, Chairman Nunes said, **"A comprehensive and ambitious transatlantic agreement would promote economic growth, strengthen an already strong economic alliance, and serve as an influential model promoting free trade and open markets around the world. The agreement is also an opportunity for the United States to resolve long-standing regulatory barriers, and, in particular, regulatory barriers not based on sound science that block our agriculture exports. Furthermore, an ambitious agreement can help to set the rules of global trade and strengthen U.S.-EU cooperation in addressing barriers in third countries."**

### **FOCUS OF THE HEARING:**

The focus of the hearing is on the benefits of expanding U.S.-EU trade, including through the negotiation of a trade and investment agreement. The hearing focus will include: (1) tariff barriers to trade; (2) regulatory barriers, including sanitary

and phytosanitary barriers to U.S. agriculture exports; (3) opportunities for regulatory cooperation and coherence; (4) services and investment barriers; and (5) ways to strengthen cooperation between the United States and the EU with regard to third-country issues.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://www.waysandmeans.house.gov/>, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, by the close of business on Friday, May 31, 2013. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

#### **FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.

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Chairman NUNES. Good afternoon. I want to welcome everyone to our hearing on the U.S.-EU trade and investment partnership negotiations. Today's hearing focuses on the enormous potential that exists in a U.S.-EU trade and investment agreement. The U.S.-EU economic relationship is the largest and most integrated in the world, comprising 50 percent of global GDP, supporting millions of U.S. jobs.

Although it is a deep and mature relationship, we can do more. The timing is exactly right to promote growth in both of our econo-

mies, and I strongly support negotiations for an ambitious and comprehensive trade and investment agreement.

From a strategic perspective, the United States and Europe have long been close allies in the effort to open markets and to promote free trade. These negotiations are an opportunity to strengthen an already strong economic alliance and serve as an influential model to promote free trade and open markets around the world. However, we should also recognize that these negotiations will not be easy. They will require enormous creativity and flexibility on both sides of the Atlantic.

Any agreement must be ambitious and comprehensive with all issues on the table. A critical area for me is agriculture and SPS. This area has been exceedingly, longstanding difficult and frustrating, which must be resolved. In particular, I would like to see sufficiently enforceable obligations that go beyond the WTO SPS chapter. I know many of my colleagues share this concern.

This hearing provides an opportunity to hear from the private sector about the potential benefits and challenges of these negotiations, and particularly, I hope that we will learn more from our witnesses about the following issues. One, addressing traditional barriers to trade, including the elimination of tariffs and liberalizing tariff rate quotas.

Two, resolving services and investment barriers, and establishing strong rules in these areas that can be jointly promoted in our engagement with other countries.

Three, creating specific commitments and an ongoing agenda to identify and eliminate unnecessary regulatory barriers, including sanitary and phytosanitary barriers to U.S. ag exports. The EU regulatory process is often non-transparent and prevents U.S. stakeholders from participating, and is unpredictable. An agreement should address the EU's practices on a comprehensive, horizontal basis.

Four, exploring opportunities for regulatory cooperation and coherence by eliminating redundancy and inefficiency without weakening our respective high standards.

And five, finally, five, developing and strengthening cooperation regarding our shared concerns with trade and investment policies in third countries, such as anti-competitive behavior from subsidized state-owned enterprises and policies that undermine intellectual property rights.

Today's hearing also highlights the need to develop and pass bipartisan trade promotion authority to provide a clear framework for Congressional consideration and implementation of trade agreements, as well as to set out negotiating objectives for this negotiation. I welcome the Administration's interest in TPA, but call for further and intensified engagement from USTR and the White House.

It is now my pleasure to yield to Ranking Member Rangel for the purpose of an opening statement.

[The prepared statement of Chairman Nunes follows:]



**Opening Statement of Trade Subcommittee Chairman Devin Nunes,  
Committee on Ways & Means**

**Hearing on U.S.-EU Trade and Investment Partnership Negotiations**

*May 16, 2013*

Good afternoon. I want to welcome everyone to our hearing on the U.S.-EU trade and investment partnership negotiations. Today's hearing focuses on the enormous potential that exists in a U.S.-EU trade and investment agreement. The U.S.-EU economic relationship is the largest and most integrated in the world, comprising 50 percent of global GDP and supporting millions of U.S. jobs.

Although it's a deep and mature relationship, we can do more. The timing is exactly right to promote growth in both of our economies, and I strongly support negotiations for an ambitious and comprehensive trade and investment agreement.

From a strategic perspective, the United States and Europe have long been close allies in the effort to open markets and promote free trade. These negotiations are an opportunity to strengthen an already strong economic alliance and serve as an influential model to promote free trade and open markets around the world.

However, we should also recognize that these negotiations will not be easy. They will require enormous creativity and flexibility on both sides of the Atlantic.

Any agreement must be ambitious and comprehensive, with all issues on the table. A critical area for me is agriculture and SPS. This area has been exceedingly longstanding, difficult, and frustrating, which must be resolved. In particular, I would like to see sufficiently enforceable obligations that go beyond the WTO SPS chapter. I know many of my colleagues share this concern.

This hearing provides an opportunity to hear from the private sector about the potential benefits and challenges of these negotiations. In particular, I hope that we will learn more from our witnesses about the following issues:

1. Addressing traditional barriers to trade, including eliminating tariffs and liberalizing tariff rate quotas.
2. Resolving services and investment barriers and establishing strong rules in these areas that can be jointly promoted in our engagement with other countries.

3. Creating specific commitments and an ongoing agenda to identify and eliminate unnecessary regulatory barriers, including sanitary and phytosanitary barriers to U.S. agriculture exports. The EU regulatory process is often non-transparent, prevents U.S. stakeholders from participating, and is unpredictable. An agreement should address the EU's practices on a comprehensive, horizontal basis.
4. Exploring opportunities for regulatory cooperation and coherence by eliminating redundancy and inefficiency without weakening our respective high standards.
5. Developing and strengthening cooperation regarding our shared concerns with trade and investment policies in third countries, such as anticompetitive behavior from subsidized state-owned enterprises and policies that undermine intellectual property rights.

Today's hearing also highlights the need to develop and pass bipartisan Trade Promotion Authority to provide a clear framework for Congressional consideration and implementation of trade agreements as well as to set out negotiating objectives for this negotiation. I welcome the Administration's interest in TPA but call for further and intensified engagement from USTR and the White House.

I will now yield to Ranking Member Rangel for the purpose of an opening statement.

Mr. RANGEL. Thank you, Mr. Chairman.

Let me say, first off, I want to thank you and your staff for the very cooperative way in which you pulled together this most important hearing, and I want to thank you for having it. The timing is just right. We are in the midst of a 90-day layover period following the administration's notification that it intends to enter into these talks.

This time gives us a chance to think about the opportunities that this kind of deal could provide. Any reduction in foreign trade barriers has the potential to strengthen our economy, and in that sense, this agreement is no different. Today one-third of all tariffs on U.S. exports through the world are paid to the EU. A successful TTIP would eliminate those tariffs, but the bigger issue is nontariff

barriers. An agreement with the European Union gives us a chance to address issues, such as regulatory nontariff barriers. There are certainly cases where these nontariff barriers arise because of a desire to protect regulatory burdens can be shared perhaps through exchanging inspection results or other information concerning public health risks, but a successful TTIP negotiation will do more than simply improve our bilateral relationship.

An agreement between these two global leaders together accounting for nearly half of the world's GDP and 30 percent of world trade gives us the chance to establish new rules and a new framework for global trade. These rules should address critical issues that are not adequately addressed under existing arrangements.

Some of these issues include, first, ensuring that exchange rates are not manipulated to gain unfair advantage in trade. Europeans are not current manipulators, and neither are we, but we can work together to develop a standard to capture what is or isn't permissible in this area.

Two, ensuring that state-owned enterprises are not granted unfair advantages over private enterprises. We and the Europeans share the view that state capitalism puts our companies at a competitive disadvantage.

There is no guarantee that we will succeed in reaching a deal that works for both sides, as it must. The European negotiators will have to consult closely with the European parliament and also the 27 member states, and our negotiators will have to consult closely with the Congress and regulatory agency, and especially this subcommittee.

At the same time, we should maintain our sense of the bigger picture. Our relationship with Europe is unlike any other. We share common objectives, common values, and this agreement has the potential to raise the bar for the next generation of trade agreements. We should capitalize on this opportunity.

And I look forward and thank all of the witnesses for their presence and tolerance with our agenda, and especially to Ambassador Eizenstat for his long commitment to public service. Thank you, Mr. Chairman.

[The prepared statement of Mr. Rangel follows:]

**Hearing on U.S.-EU Trade and Investment  
Partnership Negotiations**

Thursday, May 16, 2013, 2 p.m.  
1100 Longworth House Office Building

**Opening Statement of Charles B. Rangel**

I want to thank the Chairman for holding this hearing on the Transatlantic Trade and Investment Partnership negotiations. The timing is just right: we are in the midst of the 90-day layover period following the Administration's notification that it intends to enter into these talks.

This time gives us the chance to think about the opportunities that this kind of deal could provide. Any reduction of foreign trade barriers has the potential to strengthen our economy, and in that sense this agreement is no different. Today, one third of all tariffs on U.S. exports to the world are paid to the EU. A successful TTIP would eliminate those tariffs.

But the bigger issue is "non-tariff barriers." An agreement with the European Union gives us the chance to address issues such as regulatory non-tariff barriers. There are certainly cases where these non-tariff barriers arise because of a desire to protect a

domestic industry. We should fight those. But some of our industries have pointed out that the EU and the United States have regulations that differ for no reason other than the fact that they were developed independently.

This agreement gives our regulators the chance to look at these regulations, and, where possible, work to make those regulations more compatible. There is an important caveat, though. We can only do this if it means that we are not lowering protections for our people in any way. This agreement can't be viewed as an opportunity to establish lowest-common-denominator regulations.

There's yet another way for our regulators to cooperate. It's possible that our regulators can work together to share burdens. Done properly, it would more than just hold the line of the health and safety of our people – it would actually improve the health and safety of our people. Let's look at inspections by the Food and Drug Administration. According to a recent paper by the Council on Foreign Relations, the FDA is tasked with inspecting more than 300,000 facilities in 150 countries. This is a daunting task, in terms of personnel and other resources. Our negotiations with the Europeans may provide an opportunity to see whether this

regulatory burden can be shared, perhaps through exchanging inspection results, or other information concerning public health risks.

But a successful TTIP negotiation will do more than simply improve our bilateral relationship. An agreement between these two global leaders – together accounting for nearly half of world GDP and 30 percent of world trade – gives us the chance to establish new rules and a new framework for global trade. Those rules should address critical issues that are not adequately addressed under existing arrangements. Some of these issues include:

- ensuring that exchange rates are not manipulated to gain unfair advantages in trade. The Europeans aren't currency manipulators, and neither are we, but we can work together to develop a standard that captures what is, or isn't, permissible in this area.
- ensuring that state-owned enterprises are not granted unfair advantages over private enterprises. We and the Europeans share the view that state capitalism puts our companies at a competitive disadvantage;

- ensuring that workers' rights are respected. There is usually a concern that our free trade agreement partners have a competitive advantage by not affording their workers the same rights that we afford ours. The Europeans are leaders in the area of providing workers with protections;
- ensuring that the environment is protected. Again, as is the case with workers, the Europeans already have high environmental standards. They understand that environmental degradation is not an acceptable price to pay for increased trade but that trade agreements and environmental protection go hand in hand;
- ensuring that intellectual property rights are protected. We have our differences in some areas, but we share the view that intellectual property rights foster innovation and therefore must be protected.

We can't delude ourselves – this won't be easy. The list of transatlantic trade issues over the years is a long one. We are all familiar with the aircraft wars and the concerns over sanitary and phytosanitary barriers. The Europeans are tough negotiators, and

there is no guarantee that we will succeed in reaching a deal that works for both sides, as it must. The EU negotiators will have to consult closely with the European Parliament and also the 27 member states, and our negotiators will have to consult closely with Congress and regulatory agencies.

At the same time, we should be sure to maintain our sense of the bigger picture. Our relationship with Europe is unlike any other. We have many common objectives and values. This agreement has the potential to raise the bar for the next generation of trade agreements, and we should capitalize on this opportunity. I look forward to hearing from our witnesses.

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Chairman NUNES. Thank you, Mr. Rangel.

And I want to thank Mr. Rangel and his staff, because we have set upon this Congress to make this committee as bipartisan as possible, and this is, I think, an extraordinary achievement, because all four witnesses were agreed upon by both Mr. Rangel and his team and our team on our side.

Thank you, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman NUNES. Our first witness will be Ambassador Eizenstat, former Ambassador to the EU, who also served in a number of other important roles, including deputy treasury secretary, undersecretary of state for economic, business and agricultural affairs, and Undersecretary of Commerce for International



Trade. He now heads the international practice at the law firm of Covington & Burling, and is U.S. co-chair of the Transatlantic Business Council.

After him, we will hear from Inga Carus, CEO of Carus Corporation, an SME chemical manufacturer based in Illinois.

Our third witness will be Jim Grueff, who is currently Principal at Decision Leaders and formerly served as the lead U.S. negotiator for the WTO sanitary and phytosanitary agreement, among a number of other senior positions in the foreign agricultural service.

And last, we will hear from Greg Slater, Director of Global Trade and Competition at Intel, who is also testifying on behalf of the Business Coalition for Transatlantic Trade and the Coalition of Services Industries.

We welcome all of you, and we look forward to your testimony. Before recognizing our first witness, let me note that our time this afternoon is limited, so witnesses should keep their testimony to 5 minutes and members should keep their questioning to 5 minutes.

Ambassador Eizenstat, your written statement, like all of the witnesses, will be made part of the record. And you are now recognized for 5 minutes.

**STATEMENT OF STUART E. EIZENSTAT, PARTNER, COVINGTON & BURLING LLP, ON BEHALF OF THE TRANSATLANTIC BUSINESS COALITION**

Mr. EIZENSTAT. Chairman Nunes, my long-time dear friend, Ranking Member Rangel and distinguished members of the Trade Subcommittee. The TTIP provides the opportunity to garner more bipartisan support than almost any other economic agreement, and that is because the EU has very high labor standards and environmental protections, making some traditional opponents of free trade agreements less likely to oppose TTIP on these grounds.

TTIP would be the most comprehensive trade agreement the United States has ever entered into in history in terms of the dimensions and areas it covers. The significant economic benefits of the agreement are enormous. TTIP would provide a deficit-free way of creating jobs and growth. At a time when both sides of the Atlantic are suffering from subpar economic and job growth and high levels of unemployment, a successful TTIP can add anywhere between a half to one full percent of gains in GDP on both sides of the Atlantic.

Together, the EU and U.S. account for almost half of the global output of goods and services and almost a third of global trade, but even more so, transatlantic investment dwarfs those huge trade numbers and is the backbone of our mutual economies. There is more than three and a half trillion dollars in two-way foreign direct investment between the EU and the 27 EU countries and the U.S. American companies invest more in tiny Ireland than in China.

Another unique dimension to transatlantic trade is the high degree of integration across the pond. Intra-firm trade between U.S. and EU parent companies and their subsidiaries account for almost 40 percent of the trade between us.

Individual U.S. States will also benefit from a successful TTIP. For example, both California and New York rank first and second, respectively, as the top two States with jobs supported directly

through European investment, and second and third after Texas by total goods exports to Europe by value.

There is also a geopolitical importance to this agreement. It sends an important signal that we remain dedicated to Europe. European nations share our core values of democracy, free speech, respect for human rights and the rule of law, and they are our key allies as we face difficult global challenges.

There are essentially two competing models of governance in this world: One is our free market democratic model, and the other is the autocratic state-controlled, state-dominated model. A successful TTIP can demonstrate that our model of governance can produce tangible gains for our people on both sides of the Atlantic and, more broadly, is the best model to meet the challenges of the 21st century.

It is true that there are daunting challenges because of the comprehensive nature of the negotiations, but these are manageable. For example, we have agreed already that the EU and U.S. will make the foundation of TTIP the most comprehensive free trade agreements that each has entered, and fortunately, on both sides, that is with Korea. The EU-Korea and U.S.-Korea agreements, therefore, are a way of harmonizing as a forced order of business a workable framework agreement. This can be done in fairly short order, giving each other, in effect, what each of us gave to Korea.

Eliminating tariffs alone would boost U.S. exports by 8 percent and EU exports by 7 percent.

I would like to focus the rest of my testimony on the top priority of the Transatlantic Business Council, and that is on regulations. And this is really critical. I want to take this from a micro to a macro perspective. If, Mr. Chairman, ranking member and Members of the Subcommittee, we can agree on common standards, these will become global standards for our products around the world rather than China's. This will give us an enormous competitive advantage. The biggest potential benefit of TTIP is, therefore, in the area of regulation.

There are indeed many regulatory differences, and these have long acted as a break on transatlantic trade and growth. We do have different regulatory philosophies, and I certainly have the scars in negotiations to show that, but we have come to a point in the 21st century when we should have confidence that each other's regulatory standards are adequate to protect our publics and our companies. Our goals should be regulatory convergence and coherence to avoid impediments to trade.

In new and emerging technologies like nanotechnology or internet technology, we should seek identical standards and make those the world's standards. We should strengthen the EU-U.S. high level regulatory cooperation forum to get our regulators together, who often only think domestically and not internationally to develop common approaches. And we should adopt the concept of tested once, tested in both markets even if each other's standards are somewhat different.

I would like to close by focusing on a few areas of prime importance to the TBC companies. One is services. The volume of EU-U.S. bilateral trade in services totals almost \$350 billion, the highest in the world. It is essential that both governments ensure the

importance of trade and investment in services, including an agreement which would allow enforceable obligations for the free flow of data across borders while taking into account protections of privacy.

You mentioned, Mr. Chairman, and this is really important, state-owned enterprises. State-owned enterprises are eating our lunch on both sides of the Atlantic, and it is not acceptable. We need to have enforceable disciplines against countries like China that provide unfair subsidies and unfair advantages against our private sector companies, and TTIP is the place where we can develop disciplines to make sure that those companies, if they are state-controlled, don't get the kind of access that they otherwise would have.

It is also essential that financial services be included in the agreement. TTIP offers a terrific opportunity to coordinate the extensive but often disparate array of financial regulations. And, again, if we can agree on these, these can become global standards and help us develop financial market regulations in third countries that will be important.

Two last areas. Intellectual property. There is an unprecedented theft of intellectual property from cyber-attacks—they are in effect state-sponsored IP theft—from forced technology transfers, and for the lack of protection of our intellectual property in emerging countries. This is our seed corn. This is our advantage in the world. We must have the highest levels of IP protection in this agreement and then propound those to the world, aligning U.S. and EU positions in multilateral dialogues and encouraging robust third country IP protections.

And last is in life sciences. This is, again, an enormous area where European and American global companies still are highly competitive. We are leaders here, but if we are going to stay as leaders, TTIP must present an once-in-a-lifetime opportunity to address longstanding issues in intellectual property protection and regulatory and market access that they can improve efficiency, patient outcomes and overall business environment.

TTIP should ensure responsible data sharing that protects patient privacy, maintains the integrity of the regulatory review process, and preserves incentives for biomedical research.

In conclusion, I believe that we are embarking on an unprecedented bipartisan effort to demonstrate that free markets and free peoples can deliver, and I think we are going to succeed. Thank you.

Chairman NUNES. Thank you, Ambassador.

[The prepared statement of Mr. Eizenstat follows:]

**Testimony of  
Ambassador Stuart Eizenstat<sup>1</sup>  
US Co-Chair, Transatlantic Business Council  
before  
The United States House Ways and Means Subcommittee on Trade  
May 16, 2013**

Thank you Chairman Nunes, Ranking Member Rangel, and distinguished members of the Trade Subcommittee for this opportunity to testify at today's hearing on the Transatlantic Trade and Investment Partnership Negotiations (TTIP).

I testify today in several capacities. First, and foremost, I am testifying on behalf of the Transatlantic Business Council (TBC), for which I serve as co-chairman along with former EU Ambassador to the US Hugo Paemen. Under the leadership of Director-General Tim Bennett, the TBC strongly supports the negotiation and adoption of a comprehensive and expansive trade and investment agreement between the European Union and the United States. The TBC is a business organization representing both European and US headquartered companies, as well as Canadian, that trade and invest extensively in the transatlantic economic space. Representing over 70 manufacturing companies and service providers, the TBC seeks to promote a barrier-free transatlantic market that contributes to economic growth, innovation and security, to foster discussion and the exchange of ideas among business and government leaders.

In addition, I am also testifying as a former US Ambassador to the EU and senior trade and economic official in a variety of capacities during the Clinton Administration.

More than a dozen years ago, in testimony before the Senate Foreign Relations Committee, I called for a transatlantic free trade agreement. More recently, in 2010, I had the opportunity to make the case before the full Ways and Means Committee for a transatlantic agreement focused on regulatory and non-tariff barriers.

With the lapse of the WTO Doha Round, the case for an historic economic agreement between the US and the EU is even more compelling now than at any other point in recent decades. The challenges are great, particularly in the areas of regulatory coherence and cooperation, but so too are the opportunities. A successful agreement would not only be an important demonstration of transatlantic leadership on free trade but would also serve as a model for new standards that could be incorporated in all future trade agreements.

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<sup>1</sup> Ambassador Eizenstat heads the international trade and finance practice at Covington & Burling LLP. He was chief White House domestic policy advisor to President Jimmy Carter (1977-1981). From 1993-2001 during the Clinton Administration, he served as US Ambassador to the European Union; Under Secretary of Commerce for International Trade; Under Secretary of State for Economic, Business and Agricultural Affairs; and Deputy Secretary of the Treasury.

## I. WHY THIS AGREEMENT AND WHY NOW?

### First, I would like to put this agreement into a general context.

President Obama should be commended for embarking on the most ambitious trade agenda in recent memory -- from the Trans-Pacific Partnership (TPP) negotiations covering 11 countries and now Japan to the Transatlantic negotiations to multilateral negotiations on the International Services Agreement and expansion of the Information Technology Agreement. With the President's recent nomination of Michael Froman -- who has exerted significant leadership on trade throughout his time at the White House -- as the US Trade Representative, I believe we will see the momentum on trade continue if not increase over the course of the next year or two.

The TTIP in particular provides the opportunity to garner more bipartisan support than almost any other economic initiative. For one, the EU has high labor standards and environmental protections, making some traditional opponents of free trade agreements less likely to oppose TTIP on these grounds. Moreover, unlike some of our other trading relationships, US trade with the EU is largely balanced, with \$463 billion in US exports to the EU in 2012 and \$534 billion in imports from the EU countries. This subcommittee will play a vital role in building support for and helping secure a comprehensive and ambitious agreement that fuels transatlantic job creation and growth and sets out a path forward for a joint approach toward third countries.

The TTIP would be the most comprehensive trade agreement in history -- bilaterally, regionally or multilaterally. The comprehensive ambition of TTIP provides significant opportunities for a wide swath of sectors on both sides of the Atlantic. As set out by the US-EU High Level Working Group (HLWG) on Growth and Jobs, the Agreement will cover: tariffs; services; investment reforms and protection; government procurement; WTO-plus rules on sanitary and phyto-sanitary issues (SPS); intellectual property rights; trade facilitation; competition policy; labor and environment.

Far from undercutting the WTO multilateral trade regime, which hopelessly stalled in the Doha Round after more than nine years of negotiations, a successful TTIP can create positive pressures on key countries to liberalize their own trade policies, and possibly shift their position in multilateral trade discussions for fear of being left behind.<sup>2</sup> As noted in a recent report by the Peterson Institute for International Economics, TTIP "could become a template for the stalled global trade talks in several difficult areas, from agriculture to cross-border rules on services, investment and regulations."<sup>3</sup>

### Second, the significant economic benefits of the agreement cannot be understated. A TTIP would be a deficit-free engine for growth and jobs on both sides of the Atlantic.

While the US is more advanced in our economic recovery, both sides of the Atlantic are suffering from sub-par economic and job growth and high levels of unemployment. The TTIP is a deficit free stimulus

<sup>2</sup> See Uri Dadush, "Don't Buy the Hype on the Transatlantic Trade Deal," March 18, 2012, Carnegie Endowment for International Peace.

<sup>3</sup> See Jeff Schott and Cathleen Cimino, "Crafting a Transatlantic Trade and Investment Pact: What Can be Done?" March 2013, Peterson Institute for International Economics.

to growth and jobs. Since 2006, US-EU trade has been growing at only an average annual rate of 3.8%. U.S. GDP growth in 2013 will likely be no more than 2% and far less than that within the 27 countries of the EU. A successful TTIP can add anywhere from 0.5% to 1% gains in GDP in both the US and the EU.

The numbers are impressive. The EU and US together account for almost half of global output of goods and services and almost a third of global trade—equating to almost \$1 trillion annually.

Significantly, there is more than \$3.5 trillion in two-way foreign direct investment between the US and the 27 EU countries. American companies invest more in Ireland than in China. In fact, 70% of job-creating foreign investment in the US is from Europe, and US exports to the EU support more than 2.2 million American jobs. EU affiliates in the US provide more than 3 million jobs.

Moreover, as one recent definitive survey<sup>4</sup> demonstrates, transatlantic investment actually dwarfs trade and is the backbone of our mutual economies. In fact, the US and Europe are each other's primary source and destination for foreign direct investment (FDI). While the US and Europe accounted together for only 25% of global exports and 31% of global imports in 2011, they accounted together for 57% of inward stock of FDI and 71% of outward stock of FDI. Transatlantic investment is thus an essential component to US and European jobs and prosperity.

Another unique dimension to transatlantic trade is the high degree of integration across "the Pond." Intra-firm trade between US and EU parent companies and their subsidiaries account for approximately 40% of the trade between us. Annual transatlantic sales between foreign affiliates between the US and EU markets exceed \$4 trillion per year.

U.S. states will also benefit significantly from TTIP. Both California and New York ranked first and second respectively as the top two states with jobs supported directly through European investment. They also ranked second and third respectively after Texas by total goods exports to Europe by value. Moreover, despite uneven economic conditions in Europe, 45 of 50 states still exported more to Europe than to China based on data for the first nine months of 2012. California and Michigan, for example, exported twice as much to Europe as China during this time, while New York's exports to Europe were seven times higher than to China.<sup>5</sup>

Third, the TTIP has major geo-political importance.

At a time when many in Europe worry that America's "pivot" toward Asia will diminish our interest in Europe, and at a time when the Euro-crisis and slow growth on the Continent have sapped optimism from European publics, the launch of this negotiation sends an important signal that America remains dedicated to Europe. It is critically important to reinvigorate the transatlantic relationship because it is the European nations with which we share core values of democracy, free speech, respect for human

<sup>4</sup> See Daniel S. Hamilton and Joseph P. Quinlan, "The Transatlantic Economy 2013: Annual Survey of Jobs, Trade and Investment between the United States and Europe," Center for Transatlantic Relations Johns Hopkins University.

<sup>5</sup> *Id.*

rights and the rule of law. Europe is our key ally as we face difficult global challenges, from nuclear threats from Iran to North Korea, from the Arab revolutions to climate change.

There are essentially two competing models of governance in today's world. One is the transatlantic model shared by many other countries, based upon democratic governance, with free peoples, free markets, and free trade; the other is autocratic governance, state-controlled or dominated economies, and managed trade. The TTIP is an opportunity to show the world that our model of governance can produce tangible gains for our people on both sides of the Atlantic and more broadly is the best model to meet the challenges of the 21st century.

## II. SEIZING OPPORTUNITIES

The very ambition of the negotiation creates a daunting set of challenges for the US and EU. But there are several features which make it more manageable.

First, there is a demonstrated political commitment to success at the highest levels of the US and EU governments. Earlier this year, the U.S. government signaled its high level support for the creation of a job-creating and precedent-setting transatlantic agreement with President Obama's announcement in his State of the Union address. This support was reaffirmed just this week by President Obama and the British Prime Minister David Cameron.

Second, a great deal of work already exists upon which the TTIP negotiations can build. For example, after more than a year of intense work, the HLWG's 2013 final report established a framework for the talks, and committed the two parties to bridge gaps and differences.

More broadly, the US and EU have both agreed to make the foundation for the TTIP the most comprehensive free trade agreement each side has entered — for the US, this is the Korea-US FTA (KORUS-FTA) and for the EU, it is the Korea-EU FTA (KOREU FTA).

As the Peterson Institute analyzed in its March 2013 report, this means that the two pacts with Korea, which are similar in many respects, can be harmonized as a first order of business into a workable framework agreement in fairly short order, giving each other what each gave to Korea. While this is not to understate the differences between the two agreements, these differences are not insurmountable.

In addition, the TPP, which sets out to tackle a number of "21st century" issues including state-owned enterprises and regulatory cooperation, can also serve as an important vehicle to help raise the level of ambition reflected in the final TTIP agreement.

Third, contrary to many who dismiss it as inconsequential, since tariffs only average around 3% between the US and EU, the recommendation of the HLWG to "substantial elimination of tariffs upon entry into force and phasing out all but the most sensitive of tariffs within a short time frame," will have a large payoff. This is because the volumes of trade are so enormous, that reducing even small tariff barriers can yield significant gains. A study by ECIPE<sup>6</sup> finds that eliminating tariffs would boost EU exports by

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<sup>6</sup> Cited in the March 2013 Peterson Institute report.

7% and US exports by 8% within a few years. Also, by reducing input costs for EU and US companies integrated across the Atlantic, it will make them more competitive in global markets.

In fact, the tariffs on agricultural products are much higher, and even in the manufacturing sector, as Uri Dadush, former director of international trade at the World Bank, has noted<sup>7</sup> there are high tariffs on some products, from automobiles to apparel. Substantial tariff elimination would provide as much benefit to US companies as the entire last deal on the table at Doha.

### III PRIORITIES AND CHALLENGES

Despite these positive factors and the enormous potential economic benefits of an agreement, we cannot ignore the difficulties that lie ahead, and which will likely result in it taking several years to complete a truly comprehensive agreement.

First, each side has structural, political barriers that must be overcome. For the EU, as I saw personally in years of negotiations with the EU on a wide variety of subjects from trade to sanctions, negotiations with the European Commission must also take into account the particular interests of individual member states, especially in areas with the greatest potential benefit, like agricultural tariffs and regulations.

On the US side, while it is not necessary to launch the negotiations or to negotiate in the early stages, the absence of Trade Promotion Authority will make an agreement very difficult and perhaps impossible to conclude. The EU will not want to negotiate a final accord with the Obama Administration and then have to negotiate all over again with the Congress. The EU must have confidence that what it negotiates with the Administration will be accepted by Congress, and only Trade Promotion Authority can assure this.

I feel certain the Administration will seek this sometime this year, and discussions are already underway between the Administration and Congressional leaders on trade, Chairman Baucus, Senator Hatch, Chairman Camp and Congressman Levin. When they do so, they should be advised to seek the broadest possible authority, to include the TPP, TTIP, International Services Agreement, Information Technology Agreement, other bilateral agreements, and even a future multinational WTO agreement. At a recent TPP hearing in the Senate Finance Committee, leading Senators from Chairman Baucus to Ranking Member Senator Hatch seemed willing to support broad Fast Track Authority.

Second, agricultural issues are very difficult ones on both sides of the Atlantic. Geographical Indicators (GI) are especially difficult on the EU side. I know from my own experience as US Ambassador to the EU how politically charged the Common Agricultural Policy (CAP) is and how large a percentage of the overall EU budget goes in this area. But even here, there are grounds for optimism:

- There was a tentative EU-US accord in the Doha Round on eliminating farm export subsidies.
- On domestic agricultural subsidies, these have been significantly reduced in recent years under budget pressures to lower spending; as the Peterson Institute recommends, temporary ceilings on domestic subsidies both overall and by product sector would help ease budget pressures and stimulate the WTO talks.

<sup>7</sup> See March 18, 2012 Carnegie Endowment report.



- The EU has moved away from the product-based domestic subsidies, so prevalent during my tenure as US Ambassador, to income support for European farmers, which is expensive and unrelated to production, but is not trade distorting.
- With commodity prices high, US subsidies are less costly now.
- If the EU and US can agree on agricultural subsidy reductions, this can apply bilaterally, but can then be taken to the WTO for multilateral agreement, which if not achieved, means third countries would be at a competitive disadvantage for their agricultural products.

#### Regulatory Convergence and Cooperation

I would like to focus in particular on the challenges and opportunities posed by TTIP in the area of regulatory convergence and cooperation. This is the TBC's top priority for this agreement.

The biggest potential benefit of TTIP is in the area of regulation. In 2009, the EU estimated that aligning and rationalizing transatlantic non-tariff measures would bring a gain of \$158 billion in additional GDP and an additional 2% in exports to the US. It has also been estimated that the US would gain over \$450 billion in annual GDP and a full 6% more in annual exports to the EU in the electrical goods, chemicals, pharmaceuticals, financial services, and insurance sectors.

If TTIP to provide significant value to our two markets, it must provide opportunities to both overcome existing regulatory barriers to trade in goods and services between our two markets and strengthen existing work to prevent barriers from being established in new and emerging technology.

As noted in TBC's recent submission to USTR, we believe that regulatory differences, including with respect to the role of science and evidence in developing regulatory measures in some sectors, are acting as a brake on transatlantic trade and economic growth. Lack of regulatory convergence increases costs across the range of industrial and service sectors and undermines competitiveness among sectors across the value chain.

It is no secret that there are significant differences in regulatory philosophy between the EU's precautionary principle and the US emphasis on self-regulation, as well as differences in prescribed test procedures and requirements between US and EU regulations. That does not suggest that consumers on one side of the Atlantic would be more tolerant to unsafe products than the other. Indeed, often the intended environmental and safety outcomes are very similar.

I know from experience how challenging these issues are. In the 1990s, during the Clinton Administration, after the signing of the New Transatlantic Agreement of 1995 and the creation of the Transatlantic Business Dialogue (TABD), there was a burst of activity to negotiate Mutual Recognition Agreements. We negotiated a few in the Clinton years and another one was done in the Bush Administration. But doing these on a sector-by-sector basis is time consuming, and may not be the best approach in all circumstances.

Many US regulatory agencies are independent of the executive branch, do not have a global view and respond only to domestic mandates and congressional oversight. I vividly remember a meeting in the Old Executive Office Building with the Food and Drug Administration to try to implement the notion of "tested once, tested in both markets." But the FDA did not believe that the testing labs in every EU

member state were up to their standards. In the biotech area, in 2011, the EU approved “only six biotech products with an average approval time of 57 months”.<sup>8</sup>

In fact, we need to build confidence that in today’s 21st century, the regulatory standards in both the EU and US are adequate to protect our publics and should be accepted, for example with GAAP and International Accounting Standards, both of which adequately protect investors, without requiring costly reconciliations by corporations. The Common Market operates on the basis of mutual recognition of the member states’ varying regulations. Mutual recognition in some cases may be a more efficient and effective basis for regulatory cooperation than actual harmonization.

As negotiators address issues across legal, regulatory, and policy frameworks, they must consider how to best coordinate approaches on both sides of the Atlantic to maximize the potential for trade opportunities, reduce unnecessary costs and administrative burdens, and enhance economic growth and societal benefit. In some cases, harmonization may be among the best approaches where it results in a compromise of positions that achieve the objectives set forth above. However, TBC recognizes that harmonization may be a longer-term project. We also recognize the benefits of regulatory approaches converging where they can embrace the best practices of facilitating trade and investment. At a minimum, there should be coherence across regulatory approaches so as not to create impediments to trade. Finally, one of the most practical approaches to bridging divides across legal, regulatory and policy frameworks is interoperability -- not interoperability in the technical sense, but rather policy interoperability, or the ability of policies to work together. This type of policy interoperability often affords shorter-term solutions to enable trade and business across regions where there is incomplete legal, policy or regulatory coherence

I would like to offer the following suggestions:

- Strengthen the US-EU High Level Regulatory Cooperation Forum of key US and EU regulators to develop common approaches to regulation, with an overarching Framework Regulatory Accord, that would embodied in the Administrative Procedures Act- transparency, notice and comment by stakeholders, science-based decision making, and adopting the least costly alternative.
- With respect to existing technical regulations and standards, encourage harmonization and the consideration of the potential for mutual recognition frameworks; regulators should be encouraged to seek sectoral opportunities to adopt the concept “tested once, accepted in both markets,” even if it is to each other’s standards rather than one standard.
- Review sectors where additional regulatory convergence and standards harmonization under the High Level Regulatory Cooperation Forum during the TTIP negotiations should continue or commence, such as by identifying sectors where identical standards can be adopted. For example, we should consider an automobile agreement with the goal of mutual recognition of all auto standards to auto companies in the US and EU can export the same cars to each other that they make domestically. We should have confidence in the adequacy of each other’s automobile safety standards.
- For emerging regulations, the EU and US should implement a joint regulatory harmonization or interoperability process that promotes and facilitates the development and adoption of common

<sup>8</sup> March 2013 Peterson Institute report.

future new regulations utilizing science-based, risk-based and transparent regulatory approaches. Harmonization of EU and US standards should also be encouraged on emerging technologies, where there are no legacy issues, such as but not limited to, nanotechnology and Internet-based products and services.

- Ensure that regulatory convergence mechanisms allow companies and consumers the ability to choose international standards from multiple sources consistent with the WTO Committee on Technical Barriers to Trade Decision.
- Promote greater transparency by requiring a transatlantic impact assessment with clear criteria for evidence and cost-benefit analysis for all regulations over a certain economic impact, providing notice to either side along with an opportunity to comment.

There will not be perfection in this area, but there is great room for progress. Indeed, there has been progress. The EU has begun to approve GMO products at a rate Hiddo Houben, who heads the Trade Section of the EU Delegation in Washington DC, has indicated is one every two to three months, reducing the large backlog. And there have already been some confidence building steps taken on SPS regulations, for example on the use of lactic acid on imported beef from the US, which indicates that progress toward reducing regulatory barriers is possible.

#### Other key priorities

The TTIP has the opportunity to set new standards with respect to 21st century trade and sector-specific issues that will not only increase trade between our two markets but also provide a template for addressing shared challenges in third country markets. Joint US-EU standards would have a powerful impact on their adoption globally to the benefit of our companies and workers, rather than seeing the adoption of a Chinese standard, for example. The TBC submitted a thoughtful set of recommendations on a comprehensive set of issues to USTR late last week. I would like to highlight a few of those key priorities.

#### **Services**

Many statistical data and studies demonstrate the vital importance of trade and investment in services for the transatlantic economies. The volume of EU-US bilateral trade in services, with a total of \$338 billion in 2010, is by very far the highest in the world. The figures demonstrate the importance of the US market to European services companies and vice versa, highlighting the importance of services in the TTIP negotiations.

The large potential for further growth in services trade is hampered by regulatory restrictions on both sides of the Atlantic. For TTIP to succeed, it is essential that both governments ensure that the importance of trade and investment in services, including services that can be delivered through cross border data flows, is duly reflected in the negotiations. For example, the agreement should include enforceable obligations to ensure the free flow of data across borders while taking into account the role of privacy in supporting the trust in these data flows.

While the transatlantic services market is already very integrated, there is a need to go further. TTIP should cover market access negotiations at all possible levels, including non-tariff barriers and other forms of de facto barriers to compete. Moreover, in order to promote continued innovation and trade, it

is also important that services commitments in the TTIP be broad enough to cover both current and later developed technological advances.

#### **Competition and SOEs**

To be a truly 21st century agreement, the TTIP must include disciplines for state-owned enterprises ("SOEs") to provide a fair and level playing field for both US and European companies who compete with government owned or controlled companies in global markets. Such disciplines should ensure that SOEs not displace private company efforts, and do not enjoy unfair advantages over their private-sector competitors, whether in the form of direct aid or disparate treatment in regulatory or other matters. TBC has proposed that TTIP contain a chapter on competition and has elaborated upon the important elements related to SOEs in such a chapter in their submission.

#### **Workforce**

It is also important that TTIP or other relevant discussions between the two trading partners include measures to promote short term skilled labor mobility. Labor mobility is not only a necessary component in the provision of many cross-border services. Mobility and the corresponding ability to utilize the skills and competence of employees deployed outside of their regular country of residence are critical elements of the global talent sourcing practices increasingly common within companies on both sides of the Atlantic. This is particularly important given a vast amount of economic activity between parent companies and subsidiaries across the Atlantic.

#### **Financial Services**

It is essential that financial services be included in the agreement. Financial services involve traditional trade and investment provisions pertaining to the General Agreement on Trade in Services, horizontal issues that are of general importance to a broad range of industrial or services providers and regulatory issues which might have market access implications.

The process of up-grading the framework for financial regulation is well under way in G20 countries and beyond. The G20 reform effort effectively addresses shortcomings in financial regulations and market infrastructures and products. In the process of legislation and rule-making on those issues, regulatory cooperation between the EU and the US should play a significant role in the process of setting international standards and best practices related to financial markets regulation and oversight.

It is essential that the EU and the US continue to coordinate and collaborate on finding the best approaches to financial markets regulation in order to drive down regulatory duplication costs for companies operating on both sides of the Atlantic. A framework for regulatory cooperation within existing forms of dialogue that take place on both a transatlantic and global basis should be the most effective way forward and should add transparency to regulatory differences and commonalities.

As well as the existing dialogue, the broader EU-US negotiation on a trade agreement provides a useful avenue for pursuing deeper transatlantic cooperation in financial services regulation. Inclusion of financial services in this agreement would also set an important precedent for global standards.

### Intellectual Property

Intellectual property remains essential to economic expansion, business and societal innovation and national competitiveness for both the US and EU. As TBC advocated in its submission to USTR, the TTIP should reflect this shared reliance on intellectual property and demonstrate transatlantic leadership on IP. IP rights are being challenged by many of our trading partners in particular emerging economies - from domestic innovation policies and forced technology transfer to "state-sponsored IP theft" to an erosion of patent rights. A transatlantic trade agreement provides a unique opportunity to reflect a shared commitment to high level intellectual property protections, including by aligning U.S. and EU positions in multilateral dialogues and encouraging robust third country IP protection.

### Life Sciences

As noted in the TBC submission, the Life Sciences and the sectors it comprises account for a significant share of trade and innovation on both sides of the Atlantic. We strongly support an environment that allows the US and the EU to succeed in the global race for R&D, to spur both academic and private research, and to support innovation, job growth and the development of innovative products to improve health. In order to achieve this, the US and the EU must reward innovation and encourage open market access, investment (research funding, taxation), regulatory harmonization and mutual recognition, as well as strengthened intellectual property rights, and the removal of tariffs.

The life sciences industry is still dominated by European and American global companies that are highly integrated across the Atlantic, but market growth is being driven by the emerging markets. The competitiveness of this sector is fundamental to the economies of both the US and Europe, and to the health of its citizens. The TTIP presents a once-in-a-lifetime opportunity to address long-standing issues in IP, regulatory and market access that can improve efficiency, patient outcomes and the overall business environment. For example, the TTIP, and more broadly, the US-EU trade dialogue, should ensure responsible data sharing that protects patient privacy, maintains the integrity of the regulatory review process, and preserves incentives for biomedical research by adequately shielding confidential commercial information submitted to marketing approval authorities (for example, the European Medicines Agency) from inappropriate disclosure.

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In conclusion, I believe that the US and the EU are embarking upon an unprecedented effort to demonstrate transatlantic leadership and establish a model exemplifying our shared values of rule of law, democratic governance and open markets. The economic and political stakes are high enough that I am optimistic that our negotiators will succeed in achieving greater job-creating trade and investment not only across the Atlantic but also around the world.

Thank you.

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Chairman NUNES. Ms. Carus, you are recognized for 5 minutes. And if we can keep it as close to 5 minutes as possible. I don't want to be a time clock monitor here, but I know that we are going to have votes in probably another hour, hour and a half, so we want to make sure that we get all the testimony and allow all the members time to ask questions.

Ms. Carus, you are recognized for 5 minutes.

### STATEMENT OF INGA CARUS, PRESIDENT & CEO, CARUS CORPORATION

Ms. CARUS. Okay. Thank you. Chairman Nunes and distinguished members the subcommittee, my name is Inga Carus. I am

president and CEO of Carus Corporation. Thank you for this opportunity to speak today.

Carus Corporation of Peru, Illinois, is a family-owned company that was founded by my grandfather 98 years ago. Carus is an environmental products and services company. We manufacture products which are used by our customers both in the public utility sector as well as in private industry for the purification of water, air and ground water. We currently have about 400 employees.

In recent years, Carus has expanded from a single location in LaSalle, Illinois, to become a global corporation with locations in the U.S., Europe and Asia. Carus plans to expand further as we look for new opportunities to develop new and unique products for environmental markets.

In both the U.S. and EU, small and medium-sized SME manufacturers are key drivers of economic growth. I believe that advancing open trade policies with the EU could create new and dynamic commercial growth and export expansion opportunities for U.S. small, medium and large enterprises alike. While there are difficult hurdles to a successful TTIP negotiation, the potential benefits in terms of growth, productivity and job creation are huge.

Current tariff barriers on transatlantic trade in chemicals are relatively low, averaging around 3 percent. However, due to the high volume of trade, the benefits of removing the remaining tariff barriers would be significant. The American Chemistry Council estimates that eliminating remaining duties on transatlantic trade just in chemicals could result in savings of around \$1.5 billion a year. These savings would immediately reduce the costs of production for business, and the benefits would be reflected throughout the economy.

As an example, Carus Corporation would save 5 and a half percent of the duties on our products of material that we ship from Illinois to Carus Europe. This would result in savings to my company of \$5 million over 10 years, which we would use to create good jobs and grow exports.

The potential cost savings for governments and industry alike from enhanced regulatory cooperation are even greater than this. The goal in pursuing closer regulatory cooperation between the U.S. and EU should be to explore opportunities for creating efficiencies between regulatory systems while maintaining high levels of protection for human health and the environment.

An example of additional costs generated by regulatory barriers for Carus is the difference in standards for chemicals used for water treatment in the U.S. and the EU. Some EU member states also request a separate registration for chemicals in water, further encumbering trade.

While the U.S. and EU regulate chemicals in different ways, Carus Corporation sees the TTIP as an important opportunity to promote efficient and effective regulatory approaches and explore opportunities for cost reductions and burden sharing.

Specific actions to enhance transatlantic regulatory cooperation include efforts to promote scientific cooperation. The goal should be to minimize the potential for imposing additional regulatory barriers when revising or developing new regulations and to develop a common scientific basis for regulations. In our view, the chemical

industry is well placed to be a priority sector for enhanced regulatory cooperation under TTIP.

TTIP should also focus on ensuring greater transparency in transatlantic cooperative activity between regulators. This would help enhance stakeholder confidence and support for regulatory cooperation. An example which has cost Carus a large amount of time and resources is obtaining approval for a drinking water chemical in the EU, a material which has been in common use and has been approved for drinking water treatment for decades in the U.S.

The EU-U.S. drinking water standards are different. And although a product has been long approved by the EPA in the U.S., the approval process in the EU does not recognize this and can take years. We applied for EU approval for sodium permanganate in 2005, and it was in use in the United States for decades. And although we received approval 3 years later in 2008, for those 3 years, we could not sell the product in Europe. And we are still waiting today, 8 years later, for some EU member companies' approval who have not approved it yet.

Carus Corporation strongly supports the launch and timely completion of negotiations on a transatlantic trade and investment partnership. For the chemical industry and for thousands of small- and medium-sized manufacturers in the U.S., like Carus, it has the potential to provide a significant boost to growth and job creation, which in turn would promote innovation and strengthen the international competitiveness of U.S. exporters.

Thank you, again, for inviting me here today. I look forward to your questions.

Chairman NUNES. Thank you, Ms. Carus.

[The prepared statement of Ms. Carus follows:]



**TESTIMONY OF INGA CARUS  
ON BEHALF OF CARUS CORPORATION  
BEFORE THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE**

May 16, 2013

Chairman Nunes and distinguished Members of the Subcommittee, my name is Inga Carus. I am President and CEO of Carus Corporation. Thank you for this opportunity to speak today.

Carus Corporation ("Carus") of Peru, Illinois, is a family-owned company founded by my grandfather 98 years ago. Carus is an environmental products and services company; we manufacture products which are used by our customers, both in the public utilities sector as well as in private industry, for the purification of water, air, and groundwater (for site remediation when soil has become contaminated). Currently, we have 400 employees.

In recent years, Carus has expanded from its single location in LaSalle, Illinois to become a global corporation with locations in the U.S., Europe, and Asia. Carus plans to expand further as we look for new opportunities to develop new and unique products for environmental markets.

In both the U.S. and EU, small and medium-sized (SME) manufacturers are key drivers of growth, job creation, and major sources of innovation. I believe that advancing open trade policies with the EU could create new commercial growth and export expansion opportunities for U.S. SME manufacturers and large enterprises alike. A recent study by the Centre for Economic Policy Research estimates that an ambitious and comprehensive Trans-Atlantic Trade and Investment Partnership (TTIP) that addresses both tariff and non-tariff barriers could boost U.S. exports to the EU by an additional 123 billion dollars. In addition, the aforementioned economic benefits to the U.S. economy, a successful TTIP could potentially break the deadlock over the World Trade Organization Doha Development Round by serving as a template for addressing difficult trade issues. While Carus is aware that the TTIP negotiations are likely to be difficult, the potential benefits in terms of growth, productivity, and influencing international trade rules are substantial.



As one of the nation's largest export sectors, the U.S. chemical industry has long been a strong supporter of free and open, rules-based international trade. Europe is one of the largest markets for U.S. chemical manufacturers, with two-way trade totaling more than \$1 billion dollars last year. The further reduction or elimination of barriers to trans-Atlantic chemical trade will promote economic growth and job creation, enhance U.S. competitiveness, and expand consumer choice. To be successful, the TTIP should also resolve "behind-the-border" barriers, such as regulatory and administrative burdens, that impede U.S. manufacturers – and SMEs in particular – from increasing their participation in trans-Atlantic trade.

#### **Tariff Barriers**

As a starting point, TTIP should eliminate remaining tariff barriers on trans-Atlantic trade. Although import duties on chemicals are comparatively low duties on both sides of the Atlantic (averaging around 3%), given the magnitude of trade in between the U.S. and the EU, tariffs still impose significant costs to business. The American Chemistry Council estimates that eliminating remaining duties on trans-Atlantic trade in chemicals could result in savings of around \$1.5 billion per year, over a third of which would be in intra-company trade. These savings would immediately reduce the costs of production for business, and the benefits should be reflected throughout the economy. Carus Corporation urges that all remaining tariffs on chemicals be eliminated immediately upon the TTIP's entry into force. As an example Carus would save the 5.5% custom duties on cost of material shipped from Carus Corporation (US) to Carus Europe. Elimination of this tariff would save Carus roughly \$5 million over ten years.

#### **Enhanced Regulatory Cooperation**

Enhanced regulatory cooperation has the potential to significantly reduce costs for governments and industry alike, while maintaining high levels of protection for human health and the environment. The point of stronger U.S.-EU regulatory cooperation is not to weaken regulatory mandates, but rather to ensure that those mandates do not result in unnecessary barriers to trade. A more efficient and effective trans-Atlantic regulatory environment would provide a significant boost to innovation, growth and jobs, while ensuring that regulatory objectives are achieved.

Enhanced U.S.-EU regulatory cooperation should include the implementation of previous agreements and principles between the U.S. and EU for promoting regulatory coherence. Horizontal issues that might be addressed in the context of TTIP include assessing current areas of regulatory

divergence and options for narrowing them; developing mechanisms to ensure that potential future areas of regulatory divergence are identified and addressed; determining whether differing regulatory approaches are equivalent in meeting a similar regulatory objective; and promoting greater regulatory transparency, including in regulator-to-regulator discussions. There may also be opportunities for specific sectors to explore options for deepening trans-Atlantic regulatory cooperation. Carus Corporation strongly believes that the chemical industry should be a priority sector in this regard.

While approaches to regulating chemicals in the U.S. and Europe differ, there are common elements and issues in their efficient and effective operation. These issues are fundamental to consideration of chemical regulatory cooperation under the TTIP, and include:

- Data and information on which regulatory decisions are based.
- Processes for identifying priority substances.
- Approaches for characterizing risks and hazards.
- Transparency in regulatory processes
- Rules to protect commercial and proprietary interests.

These are areas where the U.S. and EU can seek efficiencies within current regulatory structures, while maintaining high levels of protection for human health and the environment.

Enhanced U.S.-EU regulatory cooperation in the chemical sector should not only address actual and potential areas of regulatory divergence that impose barriers and increase costs of trans-Atlantic trade. We believe strongly that negotiators should seek efficiencies within and between regulatory systems, and where appropriate, explore opportunities for burden sharing. The scope of this enhanced cooperation should be forward looking, and focused on addressing and mitigating the potential for creating new regulatory barriers. But it should also seek to identify areas where addressing existing regulatory barriers would reduce costs for industry and governments alike.

An example of additional cost generated by regulatory barrier for Carus is the difference in standards for chemicals used for water treatment: NSF is used in the US, CEN Working Group 9 (WG9) is used in Europe. In addition, some EU member states request a separate registration for chemicals in water, further encumbering trade. Another example which has cost Carus a large amount of time and resources is obtaining approval for a drinking water chemical in the EU, a chemical which has been in common use and has been approved for drinking water treatment for decades in the US. The EU/US Drinking Water standards are different, and although a product has been long approved by the EPA in the US, the approval process in the EU does not recognize this, and can take years. We applied for EU

approval for sodium permanganate (approved and used for years in the US) in 2005, and although we received approval by the EU in 2008, we are still today waiting on some EU member countries' approval (e.g. France).

The overriding principle behind enhanced regulatory cooperation on chemicals is that both sides should agree to consult and to cooperate when developing new chemicals regulations. Even where regulatory approaches differ, opportunities should be pursued to minimize divergence in regulatory outcomes and reduce costs of compliance. Understanding the data used and process employed for science-based decision-making will be key in this regard.

Enhanced U.S.-EU regulatory cooperation on chemicals issues should focus attention on the following priority areas, which are of particular interest to my company:

#### Enhanced Scientific Cooperation

A mechanism to promote stronger trans-Atlantic scientific cooperation and enhanced coordination on scientific assessments could help minimize the potential for imposing additional regulatory barriers when revising or developing new regulations. For example, discrepancies in chemical assessments (risk assessment versus hazard assessment) could impose barriers either directly or through secondary regulations, e.g. on cosmetics and food packaging. Enhanced scientific cooperation could include:

- Developing criteria for the reliability and quality of scientific data underpinning regulatory decisions;
- Providing opportunities for stakeholder input on emerging scientific issues; and,
- Considering the impact of new scientific developments on regulatory decisions.

An example of a current regulatory issue with potential for significant impact on trade and where enhanced scientific cooperation could help minimize the potential for regulatory divergence is the identification of endocrine disrupting chemicals of regulatory concern. At present it appears possible that approaches to identifying endocrine disrupting chemicals in the US and EU will differ significantly. It is critical that regulatory approaches in this area focus on screening and testing substances that may have endocrine disrupting properties in an effort to determine whether endocrine activity linked to these substances leads to adverse effects. Any approach that seeks to identify potential or suspected endocrine disrupting chemicals, without hazard characterization and clear scientific evidence of adverse effects,

could precipitate decisions to stop using these chemicals or products containing them, or could promote the switch to alternatives whose health effects may be less well understood.

A lack of regulatory compatibility with respect to endocrine disrupting chemicals could have a significant impact on trans-Atlantic trade, on agricultural as well as industrial goods. Regulatory compatibility is desirable not only with regard to criteria and methodology for reviewing substances of regulatory concern, but is also desirable when it comes to questions of thresholds. Should the EU, for example, proceed to regulate endocrine disruptors in a way that does not differentiate between products that contain significant quantities of a given substance and those that contain only an incidental amount, the cascading effect on a large number of industry sectors important to both the U.S. and EU would be enormous. The EU may well decide in the coming weeks not to include such a threshold, imposing major unintended consequences on a wide range of industries, markets and consumers on both sides of the Atlantic.

The potential divergence between regulatory approaches in the U.S. and EU highlights the need to assess the impact of chemical regulatory proposals on trans-Atlantic trade as part of overall regulatory impact analysis. In the context of TTIP, U.S. and EU regulators should explore the potential for minimizing regulatory divergence in this area, including developing a common understanding of criteria for reviewing substances of regulatory concern, testing and assessment methods, and a thorough investigation of whether adverse effects exist, and at what thresholds.

#### Transparency in Cooperative Activity

Greater transparency in trans-Atlantic cooperative activity between regulators could help enhance stakeholder confidence and support for regulatory cooperation. Industry on both sides of the Atlantic is aware that regulator-to-regulator discussions are occurring, but information on when cooperative activity is taking place, and what issues are being addressed, is typically not made available to stakeholders in advance of the discussions. Increased transparency in cooperative activity between regulators could include:

- Opportunities for stakeholder notice and comment on the proposed agenda for cooperation.
- Opportunities to suggest that particular issues will be addressed. For instance, the EU has implemented the Classification, Labeling, and Packaging (CLP) regulation, which is a part of REACH (Registration, Evaluation, Authorization of Chemicals – the legislation governing the importation and sale of chemicals in the EU) in January 2009, whereas the guidelines established by the United Nations under the Globally Harmonized System (GHS) are being

implemented with a different timeline. For Carus, greater harmonization in these systems would help avoid redundancies and huge additional costs.

- Opportunity for stakeholder participation in relevant cooperative activities, where appropriate.
- For the chemical industry, stakeholder input might include consultation with experts in particular chemistries under review on both sides of the Atlantic. This approach would help ensure a common understanding of the technical and scientific information that exists, and could help expedite government assessment of chemicals.

#### Data and Information Sharing

Carus Corporation would like to see a potential US-EU trade agreement include a commitment to address apparent and potential barriers to information sharing on chemicals across the Atlantic, including regulatory barriers, cost considerations, and the protection of legitimate commercial information. Minimizing demand for new information should be a key area of focus for enhanced trans-Atlantic chemical regulatory cooperation, and this can be facilitated by better sharing of data and information. Enhanced data and information sharing would result in significant efficiencies for both governments and industry, including eliminating unnecessary or duplicative generation, testing and submission of data. The ability to share relevant information – both the data itself and information on the *interpretation* of that data – is likely to become even more critical in the future given the emergence of new assessment technologies. The chemical industry would support further efforts under the TTIP to review the potential barriers and mechanisms for facilitating trans-Atlantic data and information sharing on chemicals, including regulatory barriers.

#### Prioritization of Chemicals for Review and Evaluation

Prioritization of chemicals in commerce for further assessment enables governments and industry to focus attention and limited resources on the substances of highest concern. Enhanced U.S.-EU cooperation in this area should include an agreement to establish and apply common principles for prioritization that are clear, specific, and transparent. These criteria should:

- Be science and risk-based, considering both the degree of hazard (hazard identification and characterization) and the extent of exposure potential (risk assessment).
- Be based on existing, available information.
- Have the flexibility to incorporate relevant scientific advances (e.g. understanding what emerging science and technology suggests for prioritization).

- Provide an opportunity for stakeholder review and comment at key points in the prioritization process, including the opportunity to provide additional, existing information in advance of final prioritization decisions
- Consider a chemical's uses and applications in the prioritization review process.

The chemical industry would support the development of an agreed process for comparing lists of chemicals prioritized for assessment in each jurisdiction. We would anticipate that the lists would contain a similar set of chemicals if the prioritization process in both jurisdictions takes account of the factors listed above, and could lead to greater efficiencies by sharing the burden of review. For example, a preliminary assessment by the American Chemistry Council indicates that there are at least 13 chemicals in common between USEPA's TSCA work plan<sup>1</sup> chemicals and the REACH list of Substances of Very High Concern (SVHC).

#### Coherence in Chemical Assessment

An important objective of regulatory cooperation should be to develop a common scientific basis for regulatory decisions. If both jurisdictions have confidence in their respective assessment procedures, there is the potential for additional efficiencies to be identified, and the burden associated with the assessment of priority chemicals to be shared between U.S. and EU regulators. A core objective should be to create certainty in the chemical assessment process on both sides of the Atlantic by understanding how common issues (such as integration of weight-of-the-evidence approaches) are addressed. While final risk management decisions should remain sovereign decisions, a common understanding on assessment could significantly reduce costs for both governments and industry by avoiding duplication and unnecessary additional testing, which would accelerate chemical reviews. Achieving greater coherence in chemical assessment processes should be a priority in discussions on chemical regulatory cooperation under the TTIP.

#### Conclusion

Carus Corporation strongly supports the launch and timely completion of negotiations on a Trans-Atlantic Trade and Investment Partnership. For the chemical and environmental clean-up industry, and for the broader economy, it has the potential to provide a significant boost to growth and job creation, which in turn would promote innovation and strengthen the international competitiveness of

<sup>1</sup> Information on the EPA Office of Pollution Prevention and Toxics (OPPT) work plan chemicals – the Agency's current effort to identify, prioritize, and assess existing chemical risks – is available at <http://www.epa.gov/oppt/existingchemicals/pubs/workplans.html>.

U.S. exporters. The successful conclusion of negotiations on the TTIP would also send an important signal to the rest of the world at a time when multilateral approaches to trade liberalization have stalled.

Thank you again for inviting me here today. I look forward to your questions

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Chairman NUNES. Mr. Grueff, you are recognized for 5 minutes.

**STATEMENT OF JAMES GRUEFF, PRINCIPAL, DECISION  
LEADERS**

Mr. GRUEFF. Thank you, Mr. Chairman and Congressman Rangel, for the invitation to be here with you today.

TTIP presents unique and extraordinary opportunities and challenges for U.S. agriculture and for those in the U.S. Government who will oversee or conduct the TTIP agriculture negotiations. There is a long and difficult history of agricultural trade policy conflicts between the U.S. and the EU, and that will be an important feature of this negotiation.

The two sides also have shown very different approaches to negotiating their free trade agreements. The U.S. has pursued a strategy of including virtually all agricultural products in its FTAs, with few notable exceptions. The EU, on the other hand, has been much more selective in the inclusion of agricultural products in its bilateral trade agreements. Therefore, for example, just agreeing on the range of products for which tariffs will be reduced or eliminated will probably be a daunting challenge in itself.

Looking at the scope of issues that can comprise the agriculture negotiations, it is clear that the most challenging area will be health-related import restrictions, known as sanitary and phytosanitary barriers, or SPS barriers as they are called.

Much of the difficulty in the U.S.-EU agriculture relationship derives from fundamental differences in their approaches to food and food production and in the management of the health risks from food and agricultural products. The U.S. asserts that it applies the science-based approach to risk management and health-related import restrictions that is completely consistent with the SPS agreement of the World Trade Organization.

The EU believes that the WTO provides the latitude to take a more risk-averse approach to risk management. This is embodied in the EU's so-called precautionary principle, which essentially states that health-related preventative measures can be applied, including import restrictions, when it is scientifically uncertain but possible that a risk exists.

These policy differences have real trade consequences. U.S. agriculture has indicated that addressing SPS barriers, the health-related barriers that block access to the EU market, is its top priority in the TTIP negotiations. These issues include, among others, the EU approach to regulating the use of agricultural biotechnology, the EU ban on anti-microbial washes for poultry meat, the beef hormones case, the EU ban on the beef and pork feed additive ractopamine and the possibility of a new trade-blocking in EU policy on cloning.

Many of these issues are complicated, longstanding and very politically sensitive, but this is what the TTIP can offer: the opportunity to bring unprecedented, high level attention to the SPS issues that are the most difficult agricultural disputes in the bilateral relationship.

In addition to the existing disputes, U.S. agriculture is advocating the concepts of SPS-Plus and SPS enforceability. SPS-Plus means essentially that the TTIP would contain SPS rules and disciplines that go beyond what the WTO currently provides, and enforceability means that the TTIP would have its own self-contained

SPS enforcement mechanisms that would be much quicker than the WTO dispute settlement process.

These are both very worthwhile objectives, but here is a note of caution. The EU's history of SPS decision-making indicates that finding agreement on these new concepts will be very difficult. Also, based on recent experience in the context of the transpacific partnership negotiations, it may be questionable whether the U.S. Government's interagency process will agree to pursue these new concepts for the TTIP.

But I believe there is a larger dilemma here regarding TTIP and the SPS issues. It will take time to make progress on the SPS issues. However, leaders at the top levels on both sides have said or implied that the TTIP is essentially an effort to provide much needed economic stimulus as quickly as possible.

The EU Trade Commissioner stated that he wants these negotiations completed by the end of next year, which would indeed be a very quick outcome. This is not a time frame that would be conducive to resolving the SPS issues of concern to U.S. agriculture.

I would suggest to you that decisions regarding the scope of the agriculture negotiations, especially decisions on the inclusion of the SPS issues, should be under serious consideration now and certainly should be made before the substantive negotiations begin.

Thank you for your attention.

Chairman NUNES. Thank you, Mr. Grueff.

[The prepared statement of Mr. Grueff follows:]



**Testimony of James Grueff, Decision Leaders  
Before the Committee on Ways and Means  
Subcommittee on Trade  
May 16, 2013**

**Agriculture in the Transatlantic Trade and Investment Partnership**

The Transatlantic Trade and Investment Partnership (TTIP) presents tremendous opportunities for U.S. agriculture and substantial challenges for those who will shape and carry out the negotiations on the agricultural portion of the agreement. A serious attempt through TTIP to address all of the significant EU-related issues and access opportunities for U.S. agriculture would probably make this process the most challenging and complicated agricultural negotiation ever attempted.

A comparison with other recent agricultural trade negotiations points out the magnitude of the challenges and potential benefits that TTIP brings for agriculture. The dimensions and scope of the TTIP/Agriculture will far exceed what was done, for example, in the recently implemented Free Trade Agreements with Korea, Colombia and Panama. TTIP/Agriculture is almost certain to be more difficult and complex than even the ambitious Trans-Pacific Partnership (TPP) now being negotiated.

**The Evolution of Trade Conflict**

The United States and the European Union have a long, unique and very difficult history in the area of agricultural trade policy. Much of this can be traced to fundamental differences in their approaches to domestic policy. The EU, for example, over the years has used subsidy and support systems that require substantial access barriers for a wide range of agricultural products. The U.S., on the other hand, has provided a system of production subsidies that requires relatively few sectors to be protected with significant access barriers.

These diverging approaches to domestic policy have been reflected in very different approaches to negotiating FTAs. The U.S. has pursued a strategy of including virtually all agricultural products in its FTAs, with few notable exceptions. The EU, on the other hand, has been much more selective in the inclusion of agricultural products in its bilateral trade agreements. For example, it has customarily excluded beef, dairy products and certain fruits and vegetables from its FTAs.

But beyond these domestic policy and trade strategy differences, much of the difficulty in the U.S.-EU agricultural relationship derives from fundamental differences in their approaches to food and food production. To a certain extent these differences are cultural and intangible, but they have very real consequences. The manifestations of these differences include the trade effects of the EU's approach to regulating the use of genetic engineering (biotechnology) in agriculture. It could be argued, for example, that the EU policy in this area has resulted in lower U.S. soybean exports representing billions of dollars of lost trade.

These contrasting U.S. and EU perspectives have evolved into very important differences in the area of risk management for food and agriculture. For issues in this area the key international agreement is the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (usually known as the SPS Agreement). The U.S. asserts that it applies a science-based approach to risk management and health-related import restrictions that is completely consistent with the SPS Agreement. The EU believes that the SPS Agreement provides the latitude to take a more risk-averse approach to risk management. This is embodied in the EU's "precautionary principle," which essentially states that health-related preventative measures can be applied, including import restrictions, when it is scientifically uncertain but possible that a risk exists.

Although dealing with the agricultural tariff and quota issues will be challenging, it would be the inclusion of the most significant SPS issues that would separate TTIP from any other trade negotiation ever attempted on agriculture. First, as described above, the two sides have fundamentally different approaches to risk management. But beyond that is the fact that the U.S. has brought to the WTO and won three cases in the SPS area, none of which has been resolved at this point. The EU measures successfully challenged by the U.S. include the ban on beef growth promoters, the prohibition on certain antimicrobial washes for poultry meat, and the EU procedures for approving the importation of biotech farm products.

The U.S. has not been without blame in the area of SPS barriers. Without any apparent scientific justification for the long delay, the U.S. Department of Agriculture has been extremely slow to revise its rules for preventing the risk of importing Bovine Spongiform Encephalopathy (BSE). Once in place these rules will allow long-denied access for EU beef into the U.S. market.

#### Structuring the Negotiations on Agriculture

Far more than for any FTA the U.S. has negotiated previously (including the TPP), decisions regarding the structure and scope of the TTIP negotiations on agriculture will be factors crucial to their success (or failure). The most difficult decisions will likely involve the extent of the inclusion of the major SPS issues in the negotiations, and there is an apparent dilemma. For example, U.S. agriculture has said that SPS and other non-tariff measures are the most important EU barriers to U.S. food and agricultural exports. But addressing these barriers in any substantial manner will require considerable time. On the other hand, the EU Trade Commissioner has said recently that his objective is to complete the TTIP negotiations by the end of 2014, which would be a very quick outcome.

The U.S. approach to negotiating agricultural tariffs and quantitative restrictions will probably not need to be complicated, although this aspect of the negotiations will unquestionably be difficult. The U.S. can remain consistent with its usual FTA approach of seeking inclusion of all products for tariff reduction and elimination, and the expansion and gradual elimination of all tariff-rate quotas. It can then attempt to minimize the EU's use of the "sensitive products" concept, i.e., the idea that certain products should be completely or partially exempted from tariff and quota elimination.

As indicated above, decisions regarding the negotiation of SPS issues will be much more difficult. There are various options available, but each has its own challenges. The administration is being urged by U.S. agriculture to include all significant SPS issues as part of a single comprehensive TTIP agreement. This “all in” option could be very positive for gaining the strong support of U.S. agriculture. However, it would also run the very real risk that some of the so far intractable SPS issues might become the greatest obstacles to completing the TTIP within a time frame acceptable to U.S. and EU leaders.

Another option for the administration could be to include certain SPS issues that have a reasonable chance of resolution within the envisioned time line for the overall negotiations, while leaving out some others. Candidates for inclusion might include finalizing all of the terms for the U.S.-EU beef agreement, which would then serve as the long-term compensation for the WTO beef hormones case. Another achievable outcome would seem to be agreement on the use of antimicrobial rinses for meat (known as pathogen reduction treatments), since the science on the safety of these treatments appears to be clear on both sides of the ocean.

Furthermore, although achieving agreement on all of the issues of agricultural biotechnology is not realistic, a very focused attempt to achieve regulatory convergence on the approval procedures for new biotech products might have a chance to succeed. Cloning is another issue that might work in a partial SPS package to be completed as part of the overall TTIP agreement. The science for some of the major food safety issues involved with cloning seems to be clear, and the current status of the cloning debate in Europe provides some reason to believe that the U.S. and EU may be able to converge substantially on this issue.

This “partial SPS package” approach could leave for later resolution issues not viewed as manageable within the TTIP negotiating time line. For example, the final and complete resolution of the beef hormones issue probably would not be attempted, since that would require either the EU or the U.S. to change decades-long policies having considerable political sensitivity. And more difficult issues in the biotech area, such as the EU policies on labeling and traceability, might be held back for later discussion.

In addition to the “all in” or “partial package” approaches to dealing with the SPS issues of TTIP, the administration could take the approach of “none in.” Putting all of the SPS issues on a “slower track” and leaving them out of the TTIP single undertaking could arguably be the best strategy for facilitating an expeditious conclusion of the overall TTIP negotiations. However, this would inevitably alienate the U.S. agricultural and food sectors and could set a very unfavorable political tone at the outset of the TTIP process. But beyond that calculation, the opportunity to use the TTIP negotiations to bring unprecedented high-level attention to some of the most difficult issues in the U.S.-EU agricultural relationship should not be easily passed up.

Likewise the importance of effectively structuring the personnel resources on the U.S. side of the TTIP negotiations should not be undervalued. For the SPS issues in particular, it would seem well-advised to have a U.S. team with permanent and active

members from all of the key regulatory agencies, and explicit commitments to the TTIP work from the heads of these agencies.

This U.S. interagency team could eventually be one of the first steps in the formation of permanent U.S.-EU structures and processes for dealing with SPS issues, hopefully along with their EU counterparts. These structures could then be used to pursue post-negotiation objectives such as convergence on the scientific approaches to risk assessment and the harmonization of domestic procedures for SPS decision making. Efforts could be made to cooperate (rather than operate as adversaries) at the key international organizations for SPS standards setting.

The gradual development of bilateral cooperation as described above could be the best approach to achieving two of the TTIP objectives frequently mentioned by U.S. agriculture, i.e., “SPS-plus” provisions and “SPS enforceability.” (The “SPS plus” concept generally means building on and going beyond the rights and obligations undertaken by all WTO members through the WTO’s SPS Agreement.) U.S. agriculture should be realistic regarding how quickly these objectives can be achieved. In the TTIP the U.S. will have a negotiating partner whose SPS policies are probably even more politically sensitive than is the case in the U.S. More immediately relevant is the very recent experience with these issues in the TPP, where reportedly the U.S. interagency process was not able to find a consensus on pursuing the primary SPS objectives proposed by U.S. agriculture.

Beyond the tariff/quota and SPS issues, U.S. agriculture will want to be very wary about what some might call “21<sup>st</sup> century issues.” The most important of these as the TTIP negotiations begin is the EU’s Renewable Energy Directive, according to which the EU’s own farm-level sustainability requirements are imposed on any country wishing to export the feedstocks for biofuel production in Europe. In addition to being a significant access barrier for U.S. exports, this measure is a troubling precedent for trade policy and as such has an importance that transcends the TTIP negotiations. It is anticipated that the EU will bring other issues that raise similar concerns from a trade policy perspective, such as animal welfare requirements.

An issue that does not quite fit into any of the categories above but which must be addressed in the TTIP is that of geographical indications (GIs). These are food or beverage designations that derive originally from production in a specific geographical location (such as “Parma” ham). The essential question is whether these designations should be legally protected for the original producers or should be available for generic use. This issue will be one of the EU’s primary offensive interests in agriculture, but GIs are also viewed by the U.S. dairy industry and others in the U.S. as a significant barrier to accessing the EU market.

The TTIP negotiations on agriculture offer the potential for tremendous benefits for the U.S. farm and food sectors. They will probably also bring unprecedented challenges for U.S. trade officials and stakeholders. In view of the interest in launching the negotiations within the next several months, already now there should be an urgency among U.S. leaders regarding decisions on the scope and structure of the agriculture negotiations, especially for the SPS area.

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Chairman NUNES. Mr. Slater, you are recognized for 5 minutes.

**STATEMENT OF GREG SLATER, DIRECTOR, GLOBAL TRADE AND COMPETITION POLICY, INTEL CORPORATION, ON BEHALF OF THE BUSINESS COALITION FOR TRANSATLANTIC TRADE AND THE COALITION OF SERVICE INDUSTRIES**

Mr. SLATER. Thank you, Mr. Chairman. And thank you, Congressman Rangel and——

Chairman NUNES. Mr. Slater, if you could turn your mike on, please.

Mr. SLATER. I apologize.

Chairman NUNES. Okay.

Mr. SLATER. Thank you, Mr. Chairman, members of the subcommittee.

I work for Intel Corporation, but today I am appearing before you on behalf of the Coalition of Services Industries, or CSI, and the Business Coalition for Transatlantic Trade, or BCTT.

CSI is the primary policy advocacy association for U.S.-based global services, and BCTT was established last year to support the TTIP negotiations. Its steering committee is co-chaired by multisectoral industry organizations and companies like Intel.

Both CSI and BCTT support the negotiations of an ambitious, comprehensive and high standard agreement between the U.S. and EU. I would like to make some suggestions today on how to achieve that objective.

First, a comprehensive agreement must take into account evolving business models as it seeks to fully liberalize trade in goods and services. U.S. manufacturing companies are increasingly using services both to manufacture and in their product distributions like never before, because of increased global competition, wiser use of global supply chains, and new opportunities provided by the information economy. This accelerated integration of goods and services has blurred the distinction between manufacturing and service companies. Trade policy needs to catch up to this trend, and negotiators should not look at goods and services as separate silos.

Also, market access commitments should apply to the entire supply chain by taking into account interrelated services, or that is, services that are in different categories but complement each other. And trade barriers for any one link in the chain can undermine a service as a whole.

Moreover, all basic ways of delivering services should be liberalized and for all types of companies. Manufacturing businesses regularly look at the services they are using and change their approach because their innovation capabilities are becoming increasingly collaborative and cross-border, involving multiple sites and parties. So, for example, stringent mobility rules for highly skilled employees can impair both the development of new goods and the delivery of additional services.

In brief, market access commitments for services should be recorded on a negative list with only a minimum number of nonconforming measures subject to timetables for full liberalization.

Second, negotiators need to creatively use all available mechanisms to reduce and remove nontariff barriers, or NTBs, in a transatlantic economy. These mechanisms can include regulatory simplification, interoperability, mutual recognition, convergence and even harmonization where appropriate. TTIP also needs to establish a framework for ongoing regulatory cooperation to reduce and remove future NTBs.

In addition, TTIP needs to establish global principles, as Ambassador Eizenstat mentioned, that the U.S. and the EU should promote to minimize NTBs in emerging markets where they are used more frequently to build up local industries and national champions. For example, new localization barriers to trade in the BRIC countries can force U.S. and EU companies to either move businesses' operations overseas or to forego important market access opportunities.

Similarly, TTIP should address technology mandates that require the use of domestic technologies, which are on the rise and can significantly undermine the competitiveness of U.S. IT companies.

Third, we note that although removing NTBs will benefit many economic sectors, like finance and insurance, there is a major multiplier effect when information and communication technology, or ICT, goods and ICT-enabled services are liberalized because they enhance efficiency and innovation capabilities across sectors. The U.S. and EU should therefore maximize opportunities for suppliers to provide services over the Internet on a cross-border and technology-neutral basis.

And TTIP should prohibit specific requirements to locate servers or data in country as a condition for allowing digital services. As with the TBC, we strongly support the administration's objectives to include provisions that facilitate cross-border data flows. The transfer of information is increasingly important to all industry sectors. There must be a clear obligation in the agreement that enables companies and their customers to electronically transfer information internally or across borders, store or access publicly available information and access their own information, wherever located.

Restricting international data flows as a means of protecting access to data or ensuring security is both inefficient and ineffective. This will only slow down the expansion of trade by so many Internet-dependent companies at a time when innovation in digital services is benefiting such a variety of industries.

The U.S. and the EU should use TTIP to bridge their differences in approaches to privacy and cyber security without undermining data flows.

Fourth, and finally, along with promoting privacy and cyber security principles to ensure interoperability in a digital infrastructure, the agreement should enhance global protection of trade secrets, again, as mentioned by Ambassador Eizenstat. There is a strong correlation between cyber attacks and cyber theft. Although trade secrets are a critical form of IP, they are subject to some of the weakest IP protections.

We appreciate the opportunity to provide input to the trade subcommittee on such a critical free trade agreement. Thank you.

Chairman NUNES. Thank you, Mr. Slater.

[The prepared statement of Mr. Slater follows:]



**Prepared Statement on Behalf of**

**THE COALITION OF SERVICES INDUSTRIES AND  
THE BUSINESS COALITION FOR TRANSATLANTIC TRADE**

**Before the**

**HOUSE COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE**

**On**

**“U.S.-EU Trade and Investment Partnership Negotiations”**

**Greg S. Slater  
Director, Trade and Competition Policy  
Intel Corporation  
May 16, 2013**

## I. Introduction

We appreciate the opportunity to participate in the House Ways and Means Subcommittee on Trade's hearing on negotiations of a U.S./EU Transatlantic Trade and Investment Partnership (TTIP) agreement. I am Greg Slater, Director of Trade and Competition Policy at Intel Corporation, and submit this written statement on behalf of the Coalition of Services Industries (CSI) and the Business Coalition for Transatlantic Trade (BCTT).

CSI is the primary policy advocacy association that works on behalf of U.S. based global service industries. Our members include a vast array of companies that provide services domestically and internationally, including accounting, banking, computer-related services, energy, express delivery and logistics, insurance, media and entertainment, retail and wholesale services, technology services, and telecommunications. CSI works to obtain international rules and market access commitments and fair conditions of competition for service industries.<sup>1</sup>

The Business Coalition for Transatlantic Trade (BCTT), established in the fall of 2012, has been assembled to promote growth, jobs, and competitiveness on both sides of the Atlantic through an ambitious, comprehensive and high-standard trade and investment agreement between the United States and the European Union. The BCTT's Steering Committee is co-chaired by major companies, including Intel, with significant equities in the transatlantic economy, as well as many of the major multi-sectoral industry organizations. In addition, several dozen other companies and sector-specific industry associations are active participants in coalition working groups. The U.S. Chamber of Commerce serves as the Secretariat of the BCTT.<sup>2</sup>

CSI and BCTT members fully support the participation of the United States in the Transatlantic Trade and Investment Partnership (TTIP) negotiations. A comprehensive TTIP will benefit the economic prosperity of the United States and the European Union and further strengthen their economic partnership across all sectors and regulatory regimes. In particular, we agree that "*new and innovative approaches* to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiation" and that, given their impact on world trade, the United States and European Union should "*develop rules and principles on emerging issues of global concerns*, thus strengthening the rules-based trading system from which all economies benefit."<sup>3</sup> We cover a few of those rules in this submission.

While this written statement is focused on certain issues related to goods and services that should be addressed in the TTIP, CSI and the BCTT and their diverse memberships have many other priorities. Some of these priorities include: addressing market access and regulatory concerns specific to trade in agriculture; removal of investment barriers and protection of investment, including investor-State dispute settlement (ISDS); and developing meaningful disciplines for state-owned enterprises.

<sup>1</sup> For more detail on CSI, see <http://servicescoalition.org/>.

<sup>2</sup> For more detail on BCTT, see <http://www.transatlantictrade.org/about/>.

<sup>3</sup> Letter from Acting United States Trade Representative Demetrios Marantis to Hon. John Boehner, March 20, 2013 [hereinafter "Letter from Acting USTR Marantis to Hon. Boehner"].



### A. Importance of U.S./EU Trade Relationship

The U.S. and the EU maintain a very strong and beneficial commercial relationship, which is the backbone of the world economy. Together, the United States and the European Union generate over \$16 trillion or nearly half of global gross domestic product (GDP), and over one-third of global trade and investment flows.<sup>4</sup>

Foreign direct investment (FDI) contributes significantly to jobs and economic growth in the U.S. and EU. Together, the transatlantic partners own \$3.7 trillion in direct investment in each other's economy.<sup>5</sup> The approximately \$2.1 trillion that U.S. firms invest in the EU is about half of all U.S. direct investment abroad and 40 times what they have invested in China. These U.S. investments in the EU generate \$3 trillion in sales for American companies annually. For their part, the \$1.6 trillion that European companies have invested in the U.S. has led to direct employment of more than 3.5 million Americans.

Trade in services accounted for 36 percent of total trade between the U.S. and the EU in 2012. Overall, the services sector generates three-quarters of GDP and employs three-quarters of the working population in both the U.S. and the EU.<sup>6</sup> The services sector has been the most important sector in creating new jobs in the U.S. and EU. Trade and investment in services sectors such as banking, securities, insurance, education, computer services, management, express delivery and logistics, architecture, legal, and engineering services contribute to the continued growth of both economies and remain a vital resource for the continued prosperity between the transatlantic partners. In 2012, the European Union exported roughly 25 percent, or \$149 billion, of its services to the United States. In the same year, the United States exported roughly 30 percent, or \$193 billion, of its services to the European Union.<sup>7</sup>

With regard to trade in goods, U.S. merchandise exports to the EU topped \$265 billion in 2012, while merchandise imports reached \$381 billion. Each day, goods and services worth \$2.7 billion are traded bilaterally, promoting economic growth in both economies.<sup>8</sup> Trade in goods between the U.S. and EU exceeded \$649 billion in 2012, representing the largest international exchange of goods in the world economy.

This broad and deep trade and investment relationship has a substantial jobs impact. The United States and the European Union are the two largest trading partners in the world, who by nearly every metric are inextricably linked. Trade with Europe currently supports 2.4 million

<sup>4</sup> "United States". *Trade-Countries and Regions*. European Commission: 2013  
<http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>.

<sup>5</sup> The Office of the United States Trade Representative. "European Union". Resource Center.  
<http://www.ustr.gov/countries-regions/europe-middle-east/europe/european-union>.

<sup>6</sup> Hamilton, Daniel S.; Quinlan, Joseph P. "Sleeping Giant: Awakening the Transatlantic Services Economy". *Paul H. Nitze School of Advanced International Studies, Centre for Transatlantic Relations*. John Hopkins University: 2007.

<sup>7</sup> Cooper, William. "EU-U.S. Economic Ties: Framework, Scope, and Magnitude". *Congressional Research Service*. Washington, D.C.: April 2, 2013.

<sup>8</sup> Letter from Acting USTR Marantis to Hon. Boehner, *supra* note 3.

American jobs, and transatlantic investment supports roughly 7 million jobs in the United States and the European Union.<sup>9</sup>

Despite these impressive statistics, there are substantial additional benefits to be gleaned from still closer cooperation.

#### **B. Benefits of a Comprehensive Transatlantic Bilateral Agreement**

We share the Administration's goal of concluding an ambitious, comprehensive, and high-standard agreement for goods and services that reduces or eliminates both tariffs and non-tariff barriers (NTBs).

1. *Tariffs.* While the U.S. and the EU have generally low tariff rates, the volume of trade is so large that the overall tariff bill our companies face is in fact quite high: A recent Bloomberg study notes that U.S. firms pay approximately \$6.4 billion in tariffs to the EU, money that could otherwise be dedicated to investment and job creation. Moreover, since as much as 40% of transatlantic trade in goods is intra-company, firms often pay duties on both sides of the Atlantic as they ship components and products back and forth. This double taxation significantly affects the global competitiveness of both U.S. and EU-headquartered firms. Thus, eliminating tariffs alone would have an immense economic impact. According to a 2010 econometric study<sup>10</sup> by the European Centre for International Political Economy (ECIPE), transatlantic trade would increase by \$120 billion within five years of tariff elimination, and U.S. and EU GDP would expand by a combined \$180 billion.

TTIP negotiators already have committed in the report of the High Level Working Group (HLWG) to "eliminate all duties on bilateral trade, with a substantial elimination of tariffs upon entry into force, and a phasing out of all but the most sensitive tariffs in a short time frame." Tariff elimination should also include elimination of any other duplicative or wasteful charges on trade or commerce in goods and services, including for example copyright levies on digital goods that are so prevalent in Europe and that impose not just double taxation but also wasteful administrative costs.<sup>11</sup> In brief, TTIP should eliminate virtually all tariffs, duties and levies immediately upon entry into force. Negotiators should spell out clear rules of origin for products benefiting from tariff elimination and allow for accumulation of origin with other trade agreement partners. In cases where tariffs remain high, the agreement should specify phase-out periods that reflect scheduled tariff elimination under other U.S. and EU trade agreements with a view toward enhancing U.S. competitiveness.

<sup>9</sup> USTR TTIP Fact Sheet (February 2013), available @ <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/february/US-EU-TTIP>.

<sup>10</sup> European Centre for International Political Economy, "A Transatlantic Zero Agreement: Estimating the Gains from Transatlantic Free Trade in Goods, Fredrik Erixon and Matthias Bauer, Occasional Papers 4/2010 (October 2010).

<sup>11</sup> For a detailed discussion on the costs of and other problems raised by the disparate copy right levy systems in various EU member states, see comments filed by the Information Technology Industry Council to USTR on May 10, 2013 regarding the TTIP Agreement.

## 2. *Non-Tariff Barriers*

The greatest gains from a US/EU bilateral agreement will be made by eliminating current non-tariff barriers (NTBs) in the transatlantic economy<sup>12</sup> known as “behind-the-border” measures, and by setting a gold standard for other governments – increasingly reliant on NTBs as a way to promote domestic industries – to follow. One study shows that eighty percent of the potential gains from TTIP would come from ensuring efficient, cost-effective and more compatible regulations for goods and services.<sup>13</sup>

We agree with the Administration that “*new and innovative approaches* to reducing the adverse impact on transatlantic commerce of non-tariff barriers must be a significant focus of the negotiation” and that, given their impact on world trade, the U.S. and EU should “*develop rules and principles on emerging issues of global concerns*, thus strengthening the rules-based trading system from which all economies benefit.”<sup>14</sup> The Dutch think tank ECORYS estimated in 2009 that just a 50 percent reduction in NTBs in the transatlantic economy would increase both EU and U.S. GDP by 3 percent, generating annual gains of \$450 billion for the U.S. and \$495 billion for Europe.

There are two types of NTBs: (i) “cost-creating” NTBs that are not in themselves discriminatory, but produce efficiency losses for both domestic and foreign firms; and (ii) “rent-creating” NTBs that explicitly discriminate against foreign firms and generate “rents” for domestic firms or regulators. It has been estimated that 40-45% of the NTBs affecting U.S.-EU trade are rent-creating, with the remainder being cost-creating.<sup>15</sup>

NTBs exist in most U.S./EU industrial sectors and apply to both goods and services, in large part because of differences in regulatory systems, standards and conformity assessments. Although these disparate rules usually have the same legitimate objectives – such as protecting health, the environment, or consumers – intended outcomes from different regulatory frameworks often afford equivalent levels of protection. Where this is the case, mutual recognition is appropriate. Where differences in levels of protection remain, the focus should be on establishing interoperability by finding the least burdensome way to bridge those gaps while providing credit for any similarities. For instance, the U.S. and EU differences in the qualifications for a variety of professionals (e.g., lawyers, doctors, engineers, architects, etc.) could be resolved by first examining whether the differences with a particular profession were substantive. Where they are not, a mutual recognition system would solve the discrepancies; and where there are substantive differences, use of the least burdensome way to fill them and providing credit for the similarities would help open up these service sectors.

<sup>12</sup> See “Potential Effects from an EU-US Free Trade Agreement – Sweden in Focus,” Swedish National Board of Trade, p. 1 (2012) [hereinafter, “Potential TTIP Effects - Sweden in Focus”]. See also Letter from Acting USTR Marantis to Hon. Boehner, *supra* note 3.

<sup>13</sup> Francois, Joseph, “Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment,” Centre for Economic Policy Research, London (March 2013) [hereinafter “An Economic Assessment”].

<sup>14</sup> Letter from Acting DUSTR Marantis to Hon. Boehner, *supra* note 3.

<sup>15</sup> Stephen Ezell, “Estimating the Potential Benefits of an EU-US Free Trade Agreement,” p. 1 (The Information Technology & Innovation Foundation, March 14, 2013) [hereinafter “ITIF Paper on TTIP Benefits”] (quoting from “Potential TTIP Effects - Sweden in Focus”).

It is important that all sectors facing regulatory divergences be included in the TTIP negotiations. The parties will not be able to achieve the same degree of regulatory cooperation commitments during the course of the negotiations, but the TTIP is also about charting a path for greater regulatory cooperation in the future. Temptations to prematurely carve out sectors, including financial service, entirely from the regulatory cooperation component should be resisted. Doing so only undermines the pledged mutual commitment to develop a comprehensive and ambitious agreement.

### 3. Estimated Economic Benefits from a Comprehensive TTIP

More broadly, the TTIP Agreement has the potential to dramatically improve U.S. economic growth, increase American jobs, and strengthen U.S. competitiveness in the global marketplace. There are various estimates on the economic benefits that will result from a robust TTIP, and all of them are impressive.

For example, the German Marshall Fund predicts that a trade pact would boost U.S. GDP by \$130 billion annually. Likewise, new research released in March by the European Commission and performed by the Center for Economic Policy Research in London estimates that a transatlantic trade and investment pact would generate economic gains for the EU of \$155 billion per year and for the U.S. \$124 billion per year, while increasing GDP across the rest of the world by \$130 billion annually.<sup>16</sup> Opening the European market further could grow the U.S. GDP by \$123 billion a year, and raise total U.S. exports by 8 percent.<sup>17</sup> Another estimate notes that as a result of the TTIP, new trade opportunities for the United States and the European Union with the rest of the world could increase by over \$50 billion and could increase world GDP by \$152 billion.<sup>18</sup>

## II. **By Using a Holistic Approach to Liberalize the Goods and Services Markets, TTIP Can Significantly Increase Transatlantic Innovation and Economic Growth**

The TTIP should fully liberalize trade in goods and services by creating stronger trade and investment rules to further open up the transatlantic market; promote effective regulatory cooperation for the development of efficient, cost-effective, and compatible regulations for goods and services; and, where regulation is not necessary, establish and promote international standards and principles to address issues of common concern outside of the transatlantic market to pre-empt more intrusive requirements. A comprehensive, high-quality and binding trade agreement will, in effect, establish a global standard that other trading partners will be measured against, and possibly could even facilitate a new round of WTO commitments.

A holistic and creative approach to the liberalization of trade and investment in goods and services would help satisfy the HLWG's mandate that the TTIP break new ground, seek innovative approaches, establish trade rules that are globally relevant, and be flexible enough to

<sup>16</sup> TTIF Paper on TTIP Benefits, *supra* note 15, p. 1.

<sup>17</sup> *Ibid.*

<sup>18</sup> An Economic Assessment, *supra* note 13.

evolve over time.<sup>19</sup> Importantly, the benefits of a creative and comprehensive U.S./EU bilateral trade agreement will encompass much more than static equilibrium gains. More impactful are the innovation gains that will occur by removing road blocks to the commercialization of new products and services, and by reducing regulatory burdens that waste precious time and resources better spent increasing the competitiveness of U.S. and EU businesses.

#### A. Address Trade Policy Implications From the Servicification Trend

In both the U.S. and the European Union, services account for about three-quarters of all economic activity and employment. The U.S. and the EU are by far the world's largest exporters of services. Together, these two economies account for 70% of global services trade, much of which takes place within the transatlantic relationship.<sup>20</sup>

Yet, policy makers should not prioritize services at the expense of goods or vice-versa. The liberalization of goods and services can be mutually reinforcing, as the increased use and sale of services by manufacturing companies also "seems to promote the manufacturing sector's exports of goods."<sup>21</sup>

Manufacturing companies use and produce more services than ever before due to increasing global competition, fragmentation of production, wiser use of global supply chains, the expansion of the global digital infrastructure (GDI) and the impacts of the information economy. As U.S. companies expand operations in Europe, they will increase their use of internal logistics, telecommunications and other services to manage their business. And, increasingly, manufacturing companies use various repair, maintenance and other services to customize, differentiate and upgrade their products, as well as prolong their business offerings to satisfy consumers, improve client loyalty, and by extension, strengthen competitiveness. Moreover, many U.S. and European manufacturing companies also are increasing their use of knowledge intensive services to help them move up the value chain and sell services along with their products. One can thus understand the importance of liberalizing trade in ICT goods and services (see Section III *infra*), which more easily allows manufacturing companies to integrate services forwards and backwards in the value chain and capture additional profit.

As a result of the foregoing commercial developments, the distinction between manufacturing and service companies is becoming blurred. The "servicification" of the economy is accelerating and trade policy needs to catch up.<sup>22</sup>

<sup>19</sup> See Office of the U.S. Trade Representative, *Final Report of the U.S.-EU High Level Group on Jobs and Growth*, February 11, 2013 [hereinafter "Final HLWG Report"].

<sup>20</sup> The U.S. exported \$210 billion in services to the EU and imported \$150 billion in services from the EU in 2012. The relative importance of services trade is growing for both the U.S. and the EU. Cross-border trade in services between the U.S. and the EU has increased from about 30% of total transatlantic trade in 2000 to 36% in 2012.

<sup>21</sup> See generally Everybody is in Services – The Impact of Servicification in Manufacturing on Trade and Trade Policy," p. 16, Swedish National Board of Trade (2012) [hereinafter "Everybody is in Services"].

<sup>22</sup> *Ibid.*

Rather than negotiating on services and goods in separate silos, it is important for TTIP to take into account and support the business models of servitized manufacturers. As explained further below, U.S. and EU trade authorities should consider negotiating goods and services in clusters – i.e., liberalizing all of the services links in supply chains for the relevant manufactured or agriculture goods. Negotiations also should use all available data to (i) tackle sensitive issues to more fully understand the overall benefits of specific liberalization proposals (e.g., impact to production of goods from liberalizing the temporary movement of highly skilled workers across the Atlantic); and (ii) effectively address new issues such as cross-border data flows with a full understanding of the benefits to both the goods and service industries.<sup>23</sup>

#### **B. Ensure Broad Market Access and National Treatment**

1. *Liberalize All Services.* The TTIP must liberalize all forms of services to achieve its full potential. Services are delivered in four basic ways – i) across borders, including via digital networks; ii) by providing the service in the firm’s home country to a service consumer who is visiting the country; iii) by providing the service directly within the consuming country through the firm’s subsidiary or branch; or iv) by temporarily sending an employee overseas. Companies will rely on all four “modes of delivery” in a seamless manner because they are not interchangeable. For example, a U.S.-based software company may export its products to Europe via the Internet (“cross-border trade,” known as mode 1), provide training to its staff at a facility in Spain (“consumption abroad,” mode 2), sell service contracts through a French affiliate (“commercial presence,” mode 3), and employ a Dutch national at its headquarters on an H-1B visa (“movement of natural persons,” mode 4). Moreover, due to technological advances firms regularly reconsider their traditional delivery modes of choice. Therefore, it is important that all modes of delivery be included across each party’s schedule of market access commitments.

For example, stringent worker mobility rules can impair both the delivery of other services and the production of goods. High value innovation is increasingly collaborative and cross-border, involving multiple sites, corporate affiliates or other parties. Due to the large investments multi-national U.S. and EU companies have made in each others’ economies, their employees with science, technology, engineering and mathematics (STEM) degrees often are involved in transatlantic R&D projects that require regular in person interaction with employees at other sites. Too often, however, visa applications take an unreasonable amount of time to process and these delays restrict important manufacturing and other business activities. With global competition and the rapid pace of innovation, employers in dynamic industries must be able to quickly and regularly deploy key employees to their sites in the United States and Europe. TTIP can simplify and streamline worker mobility rules for employees with STEM degrees to enhance collaboration and innovation within affiliates as well as between US and European companies.<sup>24</sup>

<sup>23</sup> *Ibid.*

<sup>24</sup> Specifically, the TTIP should include an expansion of permissible business activities, a new treaty visa similar to the one created for Canada and Mexico in the NAFTA agreement, streamlined procedures for intra-company transfers, improved treatment for family members relocating with a worker, and an adjustment to the J-1 home residency requirement.

Market access commitments also should provide access throughout the *entire* supply chain by taking into account inter-related services -- i.e., services that may fall in different categories but are complementary to each other in providing an integrated services package to consumers. Trade barriers for any one link can undermine a service as a whole and render companies in the transatlantic region less competitive globally. Clustering (or integrating) services is especially important for computer-related services, telecommunications, and express delivery services.

Moreover, the TTIP coverage's of negotiated commitments should apply to all types of entities that supply services, including when they integrate additional services not in existence at the conclusion of the agreement (such as software, e-commerce, and telecommunications). At a minimum, market access commitments should ensure that any new services that become possible to trade as a result of technological innovation are in a covered category and can be provided without further negotiation.

In brief, market access commitments for services should be recorded on a negative list basis, with only a minimal number of non-conforming measures that should be subject to timetables for full liberalization. U.S. suppliers of services should receive treatment no less favourable than that accorded to domestic and other foreign providers of services in European Union Member States.

2. *Minimize Barriers from Product Regulations and Licensing / Conformity Assessment Requirements.* Regulations and licensing regimes designed to ensure and approve the safety, security or quality of goods and services are increasing globally, and can seriously impede trade flows and impact market access without justification if they are discriminatory or unnecessarily restrictive. The TTIP should minimize these negative regulatory impacts through comprehensive commitments that would exceed those found in WTO law<sup>25</sup> and that the U.S. and EU could then promote globally.

In particular, governments should have the burden to show that new technical regulations and licensing requirements will treat services and goods suppliers of any country on both a *de jure* and *de facto* basis in a manner no less favourable than that accorded suppliers based in the member's own territory. Technology mandates, especially prescriptive ones that require specific design characteristics or the use of specific technologies, are especially problematic and should require significant government justification. Licensing requirements should be subject to increased transparency requirements, a specific timeframe for approval or denial of a licensing application, and no cap on the number of licenses (and thus suppliers) allowed in the market. Any supplier meeting the regulatory requirements should receive approval of their application for a license or certification. Effective and prompt appeal procedures to an independent regulator should exist in cases of denial.

<sup>25</sup> The non-discrimination clauses in the WTO Agreement on Technical Barriers to Trade apply to technical regulations and conformity assessments (e.g., TBT Articles 2 and 5). For regulations that are not technical (i.e., applicable to product characteristics and production methods), the General Agreement on Tariffs and Trade would apply (e.g., Article III). For services, the General Agreement on Trade in Services would apply (e.g., Article VII).

3. *Promote Investment Protections.* As noted earlier, investment rather than trade, is the foundation of the transatlantic economic relationship. The \$3.6 trillion dollars our firms have invested in each others' economies employ nearly 8 million workers directly, and many multiples of that in the supplier relationships they have. Combined, these investments – many in the services sector – power enterprises with annual sales exceeding \$4 trillion, a number which dwarfs both bilateral trade flows and U.S. trade and investment relationships with other countries.

Despite this remarkable relationship, there is no formal investment agreement between the United States and the European Union, although the U.S. has ratified Bilateral Investment Treaties (BITs) or Treaties of Friendship, Commerce, and Navigation with nearly all EU member states.

The EU recently gained competence from its member states to negotiate investment agreements. The TTIP should build on this to conclude a full and ambitious investment promotion and protection chapter, less out of concern for the current state of investment protection in either the United States or the EU, but as a symbol of our joint commitment to strong investment protections globally. The investment chapter of the TTIP should serve as the "gold standard" for other investment agreements.

The TTIP investment chapter with the EU should provide at least the high-standard level of protections found within the 2012 U.S. model BIT, as well as the detailed principles set out by ten U.S. and European business associations in November 2011.<sup>26</sup> Specifically, the key provisions of a TTIP chapter on investment should include:

- A broad definition of investment;
- The right to establish and operate investments on a non-discriminatory basis, across the full range of economic sectors, including agriculture, mining, manufacturing and services; this should be done on a "negative list" basis, with only limited and tightly defined exceptions;
- The right to transfer monies related to an investment;
- The right to transfer, process, store and manage data related to an investment;
- Allowing expropriation only for a public purpose, on a non-discriminatory basis, with due process, and with prompt, adequate and effective compensation for the fair-market value of the investment;
- Provisions on competition with state-owned or state-controlled enterprises; and
- A robust investor-State dispute settlement (ISDS) mechanism.

With regard to market access and limits on ownership, challenges remain on both sides of the Atlantic. Despite well-known sensitivities, TTIP negotiators should avoid carve outs of any particular sector and put all investment barriers on the negotiating table.

<sup>26</sup> See <http://www.investmentpolicycentral.com/sites/investmentpolicycentral.drupalgardens.com/files/Multi-association%20TEC%20Investment%20Principles%207.8.11%20.pdf>.



### C. Minimize Localization Barriers to Trade

The HLWG Report pointed out the opportunity that TTIP presents to address the increasing use of “localization barriers to trade” (LBTs) by other governments, which it defined as “measures designed to protect, favor, or stimulate domestic industries, services providers, or intellectual property at the expense of imported goods, services, or foreign-owned or foreign-developed intellectual property.” Many of these “local content” measures are traditional in nature – i.e., a specific form of old fashioned NTBs intended to attract and develop more domestic manufacturing in strategic industries. But more recently, some LBTs have been (i) extended upstream to include the value add of domestically developed intellectual property (IP) as part of preferential treatment initiatives for both domestic manufacturing and R&D;<sup>27</sup> (ii) broadened to include services by domestic workers;<sup>28</sup> and (iii) applied in novel ways, for example by connecting the purchase of assets that enable services with the purchase of domestic goods.<sup>29</sup>

The increasing use of LBTs in emerging markets place U.S. and EU companies, both manufacturers and service providers, in a difficult position – i.e., either move business operations to places that are not ideal or forego some market access opportunities. The TTIP should take a strong position against such measures by making it clear in the agreement that market access for goods and services will not be conditioned on requirements to (i) invest in, develop, or use local R&D, intellectual property, ICT manufacturing or assembly capabilities; (ii) transfer technology to another party involuntarily; or (iii) disclose unnecessary proprietary information. The U.S. and EU should commit to exercise best efforts, both individually and jointly, to encourage other governments to make similar comprehensive commitments on market access.

### D. Maximize Trade Facilitation Opportunities

In today’s global economy, businesses are linked together through a web of interconnected, predictable, and efficient supply chains. Inputs come from all over the world to create products with the greatest value for the consumer. As a result, more than half of all international trade today is in intermediate goods, according to the OECD. Limiting cross-border friction will boost the global competitiveness of U.S. and EU businesses and reduce costs across their highly-integrated transatlantic operations.

<sup>27</sup> For example, in February 2012, the Indian Ministry of Communications and Information Technology announced a Preferential Market Access (PMA) mandate for electronic goods that imposes local content requirements on procurement of electronic products by government and private sector entities with “security implications for the country.” A specified share of each product’s market, increasing from 30 up to 100 percent over a period of five years, would have to be filled by Indian-based manufacturers. At least one of the implementing measures issued under the PMA mandate would include domestically developed IP as part of the calculations of value add to determine the local content in a product.

<sup>28</sup> For example, India’s proposed 2010 amendment to its standard telecommunications license would have required that maintenance services performed on telecom networks be performed only by Indian workers.

<sup>29</sup> For example, last year Brazil imposed restrictions on the participation of foreign entities in the purchase of spectrum as part of the development of a 4G wireless telecommunications network, requiring that at least 60 percent of the telecom equipment be sourced locally.

Chokepoints at the border, such as costly customs procedures, inefficient security programs, and burdensome regulation, reduce the critical predictability of the supply chain, and as a result can have the same stifling impact on trade as tariffs. Indeed, a recent study by the World Economic Forum and Bain & Company entitled *Enabling Trade Valuing Growth Opportunities* found that reducing global supply chain barriers could increase world GDP by as much as 5% and international trade by 15% — figures that far surpass the potential impact of tariff elimination. Cutting red tape at the border through trade facilitation reforms could boost the world economy by as much as \$1 trillion and generate more than 20 million jobs, according to the Peterson Institute for International Economics.

The U.S. and the EU should modernize the customs architecture that governs the movement of goods across the Atlantic. Of most importance, each party should establish a “single window” through which importers and related parties can electronically submit all information to comply with customs’ and other agencies’ information requirements.<sup>30</sup> The single window on each side of the Atlantic would decrease the transaction cost of trade and open markets to small and medium-sized businesses. The U.S. and EU authorities should then agree to a common set of import and export data elements for customs, security and other government agency data requirements. Provision for electronic pre-clearance based on advanced data should also be included so that goods are cleared before their arrival at a port of entry.<sup>31</sup>

The United States and the EU should reaffirm their commitment to a multi-layered and risk-based approach to enforcement and security procedures. Risk management provides the greatest possible security while simultaneously facilitating legitimate trade. This approach should include the future development of supply chain, customs, and other government agencies’ border procedures and regulations.<sup>32</sup>

<sup>30</sup> A “one government at the border” approach means that all government agencies with border and hold authority in the U.S. the EU would develop common border procedures and coordinate inspection activities. Currently exporters face national customs clearance processes in EU Member States that maintain separate procedures and computers systems. Companies on both sides of the Atlantic face dozens of agencies that lack enforcement and facilitation coordination. To reduce the high costs and unnecessary delays this can generate, all security, customs, product safety, and other requirements should be cleared with a single release, and released separate from payments of duties or import charges.

<sup>31</sup> The TTIP can enhance mutual recognition on a number of fronts, including:

- One online application process accepted in the United States and EU Member States;
- Single validation and revalidation visits with the results accepted by both sides;
- Payment of customs duties on an account basis as opposed to per transaction;
- Permission to provide required documents and commercial information post-release; and
- Common information requirements where the export declaration of one side is accepted as the import declaration of the other side.

<sup>32</sup> The Air Cargo Advance Screening (ACAS) initiative serves as an example of how programs should be developed, by coordinating, consulting, and piloting on both sides of the Atlantic. To prevent diverging transatlantic regulations, we should develop common requirements for data, common communications with carriers and forwarders, and risk criteria. Partnership between the private and public sectors on supply chain security has become a cornerstone for transatlantic commerce. The U.S.-EU C-TPAT/AEO mutual recognition agreement was a welcome step; nevertheless, potential for further alignment remains.

In addition, raising and harmonizing the *de minimis* value to a minimum of \$800 for the collection of customs duties and other taxes on low-value goods is critical to facilitate trade. It is also critical to reducing trade barriers for SMEs, allowing them access to international markets.

### III. Liberalize ICT Goods and Services: A Cross-Sectoral Priority

Many sectors can benefit from the liberalization of tariff and non-tariff barriers in the TTIP, including finance, express delivery and logistics, banking and securities services, and insurance. However, one sector in particular has broad impact on the productivity, innovative capabilities and competitiveness of other industries and is worthy of specific attention – the Information and Communications Technology (ICT) goods and ICT-enabled services.

The economic multiplier effect of the ICT sector is well documented. “The McKinsey Global Institute estimates that the Internet alone accounted for 21 percent of the aggregate GDP growth across thirteen of the world’s largest economies from 2006 to 2011, while the World Bank estimates that ICTs accounted for one-quarter of GDP growth in many developing countries during the first decade of the 21<sup>st</sup> century.”<sup>33</sup> Moreover, “Finland’s Ministry of Employment and the Economy estimates that, by 2025, half of all value in the global economy will be created digitally.”<sup>34</sup> With regard to the U.S., one study estimates that in 2009, the American ICT industry contributed \$1 trillion to U.S. gross domestic product (GDP), or 7.1 percent of GDP, including \$600 billion from the sector itself and \$400 billion in benefits to other sectors that rely on ICT.<sup>35</sup>

When the ICT sector grows through investment, innovation and wise government policies, the global economy grows even more. For example, The World Bank has estimated that, all else being equal, a high income economy can expect to see a 1.21 percent increase in per capita GDP growth for everyone 10 percent increase in broadband penetration.<sup>36</sup> Accordingly, full liberalization of ICT goods and ICT-enabled services has become vital to healthy national economies and is entirely consistent with the recommendation in the Final HLWG Report to identify “policies and measures to increase U.S.-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness.”

**A. Enable Digital Goods and Services Over the Internet.** The U.S. and EU should maximize opportunities for ICT service suppliers to provide computer and related services, telecom services or other services over the Internet on a cross-border and technology-neutral basis. Consistent with our recommendations on LBTs in Section II.C, The TTIP should also specifically prohibit requirements to locate servers or data in-country, as they undermine the very

<sup>33</sup> ITIF Written Testimony to the U.S. International Trade Commission, Investigation No. 332-531, prepared by Stephen Ezell for the ITC Hearing on “Digital Trade in the U.S. and Global Economies” (March 14, 2013).

<sup>34</sup> *Ibid.*

<sup>35</sup> See Shapiro & Mathur, *The Contribution of ICT to American Growth, Productivity, Jobs and Prosperity* (September 2011).

<sup>36</sup> World Bank, *Information and Communications for Development 2009: Extending Reach and Increasing Impact* (2009).

definition of cross-border services. On a related note, the U.S. and EU should agree to increased cooperation to enable innovation in the interconnectivity of physical goods (the “Internet of Things”) while avoiding divergent policy approaches.

**B. *Ensure Cross-border Data Flows and Transfers of Information.*** One of the Administration’s objectives for the TTIP, cited in the May 20th letter notifying Congress of its intent to enter into negotiations, is to “seek to include provisions that facilitate the movement of cross-border data flows.”<sup>37</sup> We agree that this issue needs to be a top priority given that the transfer of information is increasingly important in all industry sectors that engage in transatlantic commerce.

In support of services through electronic channels, there must be a clear obligation to permit cross border data flows and external data storage, management, processing, and access (so, for example, users may benefit from the availability of cloud computing services), both within a firm, in its operations in other markets, and with its customers, wherever they may be located. This principle has been described in the EU-U.S. Trade Principles for ICT Services and in the OECD Internet policy principles.

Restricting international data flows as a means of protecting access to data or ensuring security is ineffective and inefficient. The primary effect of that approach is to slow the expansion of trade in all internet-dependent services, and cloud services in particular, at precisely the time when innovation in these services is growing exponentially and benefitting so many entities—particularly SMEs—in a variety of industries. Below we discuss how the U.S. and EU can use TTIP to effectively bridge differences in approaches to privacy and cyber security (see Sections III.D and E).

The Parties should thus establish a framework in the TTIP that establishes strong and binding provisions to support the cross-border flow of data, which enables service suppliers, or customers of those suppliers, to electronically transfer information internally or across borders, store or access publically available information, and/or access their own information stored in other countries. These TTIP provisions should set global principles for the free flow of information across borders without requirements to locate or store data in-country.

**C. *Apply and Promote Interoperable Transatlantic Privacy Principles.*** It is possible for the TTIP to accommodate both a robust privacy commitment and a strong commitment to safeguard cross-border data flows. Most privacy laws are based on the Fair Information Practices Principles, which have been developed over time in the US and the EU, and a version of which was ratified by the OECD as part of their Privacy Guidelines in 1980. This commonality means basic interoperability to privacy exists across the U.S., EU and other countries at the principle level, even if significant divergences exist in domestic laws and implementation methodologies due to local legal and cultural priorities.

Economic growth requires individuals to trust their use of digital devices and the services which rely upon them. The U.S. and the EU have the shared objective of maintaining high privacy principles to foster this trust, while also promoting maximum interoperability to enable the global information flows supporting the digital economy and information society.

<sup>37</sup> Letter from Acting USTR Marantis to Hon. Boelmer, *supra* note 3.

An example of such a beneficial and cooperative approach is the current work being undertaken in APEC to map Binding Corporate Rules (BCRs) and Cross Border Privacy Rules (CBPRs). This mapping seeks to find the common elements between BCRs and CBPRs so that credit can be given for the valid work of complying with one standard when demonstrating compliance with the other standard. This mapping and interoperability will reduce much of the duplicative effort required to comply with separate regulations without diminishing the standards upon which the regulations are founded.

Accordingly, CSI and the BCTT recommend that, among other principles, the TTIP negotiators (i) minimize the potential burdens and unintended consequences of developing and implementing separate, yet credible privacy policy frameworks and regulations; (ii) adopt global standards that facilitate innovation and access to the latest privacy features in ICT products and services; (iii) explore flexible and “totality of the circumstances” ways of recognizing credible approaches to privacy based on common principles to safeguard personal information in a way that furthers the digital economy and information society; and (iv) support and expand the mapping of new and existing regulations and policy frameworks to allow global organizations to leverage existing compliance procedures to satisfy some or all of the compliance requirements of other regulations. These “transatlantic privacy principles” will encourage global interoperability, thus ensuring a high standard of personal data protection in a manner that avoids undue administrative burdens and restrictions on international data transfer.

**D. Apply and Promote Effective Transatlantic Cyber Security Principles.** In recent years, there has been a dramatic increase in both the quantity and the severity of malicious cyber attacks that can impede the use and even discourage the development and dissemination of ICT and ICT-enabled services. It is important for the U.S. and the EU to pursue policies to incentivize organizations to create a more secure global digital infrastructure. To date, countries and regions have approached cyber security in a disconnected manner. Through TTIP, the U.S. and EU have an opportunity to embrace emerging common cyber security standards, incentives and principles that minimize both security threats and any trade-distorting impacts.

Specifically, in June 2012, ITI, Digital Europe (DE), and the Japan Electronics & Information Technology Industries Association (JEITA) issued a “Global ICT Industry Statement: Recommended Government Approaches to Cybersecurity.” This statement provides all governments with a common foundation for policymaking in the area of cyber security. The 12 recommendations represent a cooperative approach between government and industry that meets security needs while preserving interoperability, openness, and industry’s capability to innovate and compete. We urge the parties to use the TTIP to promote these approaches.

#### **IV. Enhance Global Protection of Trade Secrets**

The effective protection and enforcement of intellectual property rights (IPR) allows innovation to develop because it creates a climate in which innovators receive the incentives to invest in the research, development, and commercialization of leading-edge technologies. Moreover, in such a climate, innovators are more likely to share their innovations and transfer

technology voluntarily to others, knowing that the terms on which they do that will be respected and effectively enforced if necessary.<sup>38</sup>

TTIP negotiators already know that they should not spend time and resources trying to fully harmonize their IP systems. Instead, as the HLWG report notes, the Parties are willing to address and cooperate extensively on several issues of common concern that “would not only be relevant to bilateral commerce, but would also contribute to the progressive strengthening of the multilateral trading system.” One IP issue that fits these criteria very well is the need to enhance global protection of trade secrets. Many of the cyber attacks, discussed in Section III.D, are designed to misappropriate trade secrets.

Although some of a company’s most valuable assets can be embodied in trade secrets, this type of IP often is subject to the weakest legal protections as compared to other types of IP. The entire economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Once disclosed, trade secrets cannot be recovered because this form of IP does not give its owner an exclusive right (in contrast to a patent, for example).<sup>39</sup>

Trade secret misappropriation is on the rise due to greater global competitiveness and a significant increase in the use of digital devices that process data on a nearly constant basis, which in turn increases the targets for cyber attacks. Moreover, some governments are requesting excessive amounts of confidential information as a condition of product approvals, which raises a different kind of disclosure risk.

The TTIP should be used to develop a comprehensive model trade secret protection system that can be promoted globally. This system should effectively (i) address trade secret theft; (ii) increase government to government cooperation to minimize cross-border incidences of trade secret theft; (iii) minimize increasing government requests for excessive and unnecessary confidential information (trade secrets) as a condition of product approvals (market access), and (iv) address inadequate government procedures to protect the confidential information they receive.

Both the U.S. and EU governments are currently reviewing their respective trade secret laws to determine how they could be improved. A TTIP commitment to identify and adhere to the basic elements of a model trade secret law, and promote it globally, is especially important because the relevant obligations in Article 39 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights require only minimum levels of protection for trade secrets. Separate from model legislation effectively addressing trade secret theft, a comprehensive trade secret protection system also should require governments to justify requests for disclosure of trade secrets as a condition of product approval or market access.

<sup>38</sup> See “The Economic Value of Intellectual Property,” Robert J. Shapiro & Kevin A. Hasselt, p. 8 (Oct. 2005); available: <http://www.somcon.com/docs/studies/IntellectualPropertyReport-October2005.pdf>. See also D. M. Gould and William C. Gruben, “The Role of Intellectual Property Rights in Economic Growth,” *Journal of Development Economics*, Vol. 48, No. 2 (1996).

<sup>39</sup> Trade secrets do not prevent another company from developing that same knowledge independently. Instead, they merely safeguard the often substantial investment by one company from unfair theft and deliberate misuse by another.

## V. Conclusion

CSI and BCTT strongly support the proposed Transatlantic Trade & Investment Partnership. It has the potential to strengthen the U.S. economic recovery, generate good jobs, and fortify the global rules-based trading system. It will extend similar benefits to the citizens of the European Union. We urge that negotiations for a comprehensive and ambitious TTIP be formally launched as soon as possible with a goal of concluding them expeditiously. For the United States to achieve the goal of a true 21st century agreement with state-of-the-art rules, our negotiators must hold fast to the goal of a comprehensive and ambitious accord. We look forward to working with Congress and the Administration to assist in achieving this goal.

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Chairman NUNES. My first question is for Mr. Grueff. You describe a little bit of the EU's regulatory system, and I was hoping that you could maybe go into some of the top barriers that you see to agricultural products. And I know you had some ideas and concepts that you mentioned on SPS and perhaps a way that we can move forward. Also I would kind of like your opinion on whether or not the EU is actually serious about removing these barriers and serious about agriculture.

Mr. GRUEFF. Well, as you know, Mr. Chairman, this is a very challenging topic. I believe that they are—first of all, from the big picture perspective, that the European Union is very serious about the TTIP.

I think that any negotiations in the SPS area are going to be very difficult for them. These are very politically sensitive issues for them, as I think you know. There are cultural differences that have very much had an impact on the policy process. This very much is demonstrated in the issues of agricultural biotechnology, in which the EU consumers apparently feel it is important to have the right to know how food was produced. American consumers, I believe, are more trusting in the U.S. regulatory agencies and don't have those kinds of concerns.

There are a wide range of SPS issues, many of them that we could talk about. One that I would find, I mentioned it in the written testimony, is the issue of the, what are called antimicrobial washes, or pathogen-reduction treatments, because the science is basically the same on both sides. In other words, in the EU, the scientific advisors for the EU have said basically these are safe substances, and the political process did not allow the system to work with the information and for there to be approvals, and so we have a trade dispute right now that is lingering at the WTO on that particular issue.

The issue of ractopamine is a very important issue, not just with the EU. This is the feed for pork and beef production widely used in the U.S. It is a very important issue, because there are also bans in Russia and China and other countries.

Again, the U.S. perspective, and I would agree is that the science is clear on this. There is now an international standard at the Codex Alimentarius. The EU is not accepting the international standard. This has very broad implications that the EU is not accepting the international standard here.

So my point in the oral testimony about this is going to take time is that it isn't just a matter of negotiating tariffs, as difficult as that will be. There is a lot more to these issues. It goes to their view of risk management, their view of their right to be more risk-averse than perhaps we are and many other countries.

So it is going to take a very focused and in-depth approach. And it is going to take also, I might add, a real team effort on the part of the U.S. regulatory agencies. The U.S. side is very much going to need the expertise of the Food and Drug Administration and other regulatory agencies to take on these issues.

Chairman NUNES. Thank you, Mr. Grueff.

And as you know, our European friends, it is sometimes tough to decipher between, you know, what is a real issue and what is just a nontariff barrier to trade. And as our European friends and the ones who have come to visit me, agriculture is also a sensitive topic for us, as is food safety. So I appreciate your comments.

Ambassador, I actually—would you like to comment on the agricultural issue?

Mr. EIZENSTAT. Yes, if I may.

Chairman NUNES. Sure.

Mr. EIZENSTAT. When I was ambassador to the EU, we, after some difficulty, got the first genetically modified product approved, Roundup Ready soybeans and then later tomatoes. And interestingly, in the last, I would say, 6 months, there has been a fairly significant increase in European Union approval of GMO products,



so that does indicate at least in this area that we are making some progress.

Chairman NUNES. Well, as someone who used to hoe weeds, Roundup Ready crops were a big benefit for those of us who had to actually work in the fields.

I had an additional question for you, Ambassador, as it relates to—you mentioned this in your testimony about financial services. And I know the President's nominee, Mr. Froman, has expressed that everything should be on the table, but we have read some reports, heard rumors about some in the administration who want to exclude financial services. Do you think this would be appropriate?

Mr. EIZENSTAT. No. I think it would be disastrous, and the "some" may be in one of my former departments. I think it is very important that financial services be included, because financial services are really the backbone of all the international trade we do. We have more than a dozen financial regulatory agencies, and I think it is important that Treasury, through the Financial Stability Oversight Council, coordinate their regulations so that we don't have disparate regulations coming out of each. We avoid extraterritoriality, and we get those agencies to think globally.

There is also a market access issue, Mr. Chairman, and I know Mr. Neal is also interested in this issue as well. For example, our banks simply cannot get full access to many emerging markets. We can't get consumer banking in China, for example. So it would be very useful for the EU and the U.S. together to collaborate in third markets.

And last, TTIP offers a really critically needed forum to establish a framework to coordinate the extensive but often disparate array of regulatory efforts on both sides of the Atlantic. It provides an enormous opportunity to create a process for discussion in an early stage, to help resolve or at least mitigate regulatory differences. The goal should be to promote greater financial compatibility and where possible, mutual recognition of equivalence.

And the positive impact would also be that if we can agree between the U.S. and EU, then we can also promote those same high quality regulatory standards in global financial markets, particularly in faster growing developing markets. So I think it is tremendously important. This is not at the expense of what is happening at the G20. It would supplement it. It is a terrific forum. It would be an enormous missed opportunity if financial services aren't included.

Chairman NUNES. Well, thank you, Ambassador.

I would now like to recognize Ranking Member Rangel for his questions.

Mr. RANGEL. Thank you.

This sounds like a revolutionary advancement that we can make to improve the trading commerce with the EU and, therefore, around the globe. I guess it is accepted that an educated constituency, one that is able to have a job, actually contributes to commerce, being the consumer, and it could even give us a brighter economic picture, the same way poverty takes away from our opportunity to enjoy a higher quality of life for some.

In these agreements, I notice that the question of visas and skills or lack of skills or job qualifications are given a consideration rather than just goods and services.

Ambassador Eizenstat, you have served your government in so many different capacities, but it just seems to me—is there anything in the trade bill or could possibly be that deals with the question of poverty, healthcare, education or to be able to say that after this revolutionary trade bill passes, that countries that are in poverty can depend on the increase in advantages that we make, that somehow that they were on the agenda as we conclude these type of negotiations?

Any member could answer, but I know what Ambassador Eizenstat—

Mr. EIZENSTAT. Well, I—Mr. Member, I did an op-ed Article 2 weeks ago in the Washington Post on the need for a public-private apprenticeship program to provide skilled workers, because I believe with lower energy prices, we are going to get more and more companies coming back to the United States who have gone over, and other companies like Siemens who want to invest more here and don't have the skilled workers.

This can be done very inexpensively. It is the German model. It is very much putting an employee, potential employee, who is at the community college, in a plant to learn a skill so he or she can actually get that job afterward. It is being done in States like South Carolina, where they are financing such a program.

This is not in TTIP, but what there is a workforce provision to promote the skilled labor mobility between integrated companies. And this would be tremendously important to help our workforces have the free flow of commerce to promote more labor force mobility. So there is a large—

Mr. RANGEL. But this is—

Mr. EIZENSTAT [continuing]. Workforce—

Mr. RANGEL. But this was my point, Ambassador. I am saying because you could provide a wedge in trade to get individuals with talents and skills to come in, what is in there to get people without talents, without skills and not the beneficiary of these agreements?

You know, when world history is recorded, I think is going to be one of the biggest things that they have said that civilization has done in coming together, pulling together our resources and trying to level the quality of life for everyone, but somehow there are people all over the world, and indeed in the United States, that it would appear from the record that there was no consideration at all as to whether or not technology even allowed more of them to become unemployed and go into poverty.

And if you can stretch trade into including such things as individual skills, why can't you stretch it to include lack of skills and lack of resources so that the record would be clear that this isn't just for Europe and America, it is for the quality of life for the world? I think this is the way we have got to sell this project to the world: It is for everybody.

Mr. EIZENSTAT. Well, again, this is still a trade negotiation, and we would have to address skills training separately. But what we should address, and is to be addressed and it is part of the

mandate, is to promote labor market mobility, provide an ease of people getting jobs across the Atlantic——

Mr. RANGEL. How do you—how do you——

Mr. EIZENSTAT [continuing]. Through joint research projects——

Mr. RANGEL. Ambassador, you say this is trade, and I never would have raised this until I saw that skills are included in this now.

Mr. EIZENSTAT. They are. That is correct.

Mr. RANGEL. Well, poverty is included in this as well; education is included. And so when you say—when I was fighting international drug trafficking, that is all I heard, that this is a trade bill, and we have to deal with trade. So I have given up on trying to stretch what trade is, but I see that, and I don't know whether anyone disagrees with me, that you find yourselves very comfortable in talking about who should be allowed to come into our country based on the skills that they have. Is that correct?

Mr. EIZENSTAT. That is correct.

Mr. RANGEL. Well, if that is correct, it is a stretch, don't you think it is a stretch to include that in trade, our immigration programs?

Mr. EIZENSTAT. Well, again, there is a workforce provision that will be negotiated, and perhaps that will provide the latitude for——

Mr. RANGEL. But it has nothing to do with trade. I mean, it is not in the trade bill.

Mr. EIZENSTAT. It does have to do with trade.

Mr. RANGEL. Will it be in the bill?

Mr. EIZENSTAT. It is in the bill, yes.

Mr. RANGEL. Okay.

Mr. EIZENSTAT. Workforce mobility is specifically mandated between the EU and the U.S. as a negotiating topic. There is an agreement that this should be one of the areas that should be covered.

Mr. RANGEL. Is it your professional opinion that the question of educating everybody generally to have them to be more of a consumer around the world and especially in the United States is not the proper subject for a trade agreement?

Mr. EIZENSTAT. No. I mean, I think that what we want to promote, and this is also part of it, is to allow, for example, certification from universities, so we accept each other's university degrees, having scientists and engineers and others be able to work on joint collaborative projects across the Atlantic. So this is going to be the first trade agreement, I believe and hope, that will actually have a workforce provision in it.

Mr. RANGEL. Thank you, Ambassador. I didn't make my point as clear as I wanted. Thank you.

Ms. CARUS. May I speak to that question?

Chairman NUNES. Sure.

Ms. CARUS. I just wanted to speak in support of Ambassador Eizenstat's statements about workforce mobility. One of the biggest challenges we face as a small- to medium-sized enterprise is talent and skilled labor, and this addition to the bill would be enormously advantageous to companies like Carus.

Chairman NUNES. Thank you, Ms. Carus.

Mr. Rangel, any more questions?

Mr. RANGEL. No, thank you, Mr. Chairman.

Chairman NUNES. Ms. Jenkins is recognized for 5 minutes.

Ms. JENKINS. Thank you, Mr. Chair.

And I thank you and the ranking member for hosting this very important hearing. Thank the panel members for participating.

And first, I would like to echo the sentiments of Chairman Nunes and his concerns with the European Union's restrictive SPS barriers.

But having covered that topic sufficiently, I would like to turn toward another issue, because improving regulatory cooperation and coherence would be a key benefit of any United States-EU trade agreement. And the EU regulatory process is often non-transparent, prevents U.S. stakeholders from participating, and it is unpredictable. And while Kansas livestock producers noticed this primarily when facing restrictions on our U.S. beef and pork, it is true that there would be sufficient gains from simply bringing the EU into compliance with the type of commitments that were included in chorus. And I think it is fair to say that those gains would not be exclusive to U.S. producers, but would also benefit producers in the EU.

So really for any of you, how would addressing horizontal regulatory issues help to open up the EU market, and what are the relative merits of addressing these horizontal issues as compared to sector-specific harmonization? Sure.

Mr. EIZENSTAT. One of the things that I have suggested, and my testimony actually suggested, for well over a decade is that we need to have certain sectoral agreements. Let me give you an example; then I will go to the horizontal. The Auto Industry on both sides of the Atlantic wants to enter into a sectoral agreement in which they basically accept each other's standards. It makes no sense that BMW produces a product in South Carolina that it then can't export to Europe, and that the BMW they make in Europe can't be exported to the U.S. There are different bumper standards, for example.

This is an area where mutual recognition should exist; that is, we recognize that each other's safety standards in autos may not be identical, but they are adequate to protect each other. And that is the way the common market works within Europe. It is not that France and Germany or France and Sweden have identical regulations, but they accept each other's regulations as being equivalent.

Second, your point, which is tremendously important, is horizontal. We can't get that kind of sectoral agreement in every area, so we should adopt certain horizontal standards. For example, have an accord that all regulations that have a transatlantic impact of more than, say, \$500 million require notice to companies on both sides of the Atlantic and the opportunity to comment; that the least costly regulatory alternative should be taken; that the process should be transparent; that it should be science based, which is tremendously important for agriculture, but for pharmaceuticals and others. And those kinds of basic principles would be very important.

Mr. Grueff is certainly correct, and I have suffered for this in many negotiations with the U.S. on the precautionary principle, it is a huge barrier, but if we could establish those kinds of horizontal principles, it would give us a real leg up so that we go beyond, in the agricultural area, the SPS area and exceptional.

We establish the fact that we have to have sound science, least costly alternatives, transparency, notice. If we can agree on those, then that will at least give us a head start with our own dispute resolution process, as you probably agree. That would be a big start. Where we can get identical standards, like I hope we can get in the auto area, we should do it.

And Mr. Neal and Mr. Rangel, I mention because of New York, we have been negotiating for years on common accounting standards. We use GAAP accounting; they use International Accounting Standards. I can assure you that both adequately protect investors. The costs of annual reconciliations by a European company doing business here and vice versa is, like, \$2 billion. That should be simply accepted that they each, although they are different, they each adequately protect, they are equivalent, and we do away with reconciliation.

Ms. JENKINS. Other thoughts?

Mr. GRUEFF. Yes. I agree with the ambassador. If there could be a horizontal approach to regulatory convergence, I think that would be a very good development for U.S. agriculture. I guess looking at our very difficult, sad history with the European Union on agricultural trade issues over decades, I am somewhat skeptical. It is certainly worth an effort.

I think in answer to the chairman's first question to me, even as our negotiators begin to try to deal with the issues that you have raised, for example, ractopamine, it is an access issue for beef and pork and the original beef hormones issue, I think really this takes negotiators immediately into very challenging questions like how was—was there a risk assessment done? How was the risk assessment done? Are you following international standards? If you are not following international standards, according to the WTO rules, there have to be very specific reasons why the member, a WTO member is not following international standards.

I would think that the approach would need to be very specific and immediately very challenging in terms of why the European Union is implementing these specific SPS measures at the border that it is. If this somehow could be countered with a horizontal approach, I think that would be ideal. I guess I am skeptical that it could be done.

Ms. JENKINS. Mr. Slater.

Mr. SLATER. Thank you. Just to add to what has been said, I think you are going to—it is obvious to me that, at some point, the parties are going to sign off even though not everything has been done. We have achieved simplification in this other area, convergence in this area, maybe even harmonization in this area.

No approach is going to work across the board, but with a horizontal regulatory hierarchy, or best practices, you can keep working on these issues beyond the signature of the agreement and keep making progress. I do think they have to be detailed. In addition to notice and comment and some description of what was done,

you have to—it would be great if the Europeans would be forced to go through and explain what alternatives they considered and why they were rejected, and go through all of the feasible alternatives to be able to show them that there is a better way. I know this is going to be tough, but that exercise is critical to make progress going forward beyond when the agreement's concluded. Thank you.

Ms. JENKINS. Thank you.

Mr. EIZENSTAT. Let me say that this is not just an EU problem, it is a U.S. problem. Our regulatory agencies are independent oftentimes of the executive branch. They have domestic focus only. And I can remember meeting in the now called Eisenhower Executive Office Building with FDA when we were trying to get mutual recognition. We encouraged the FDA to at least allow testing in European labs to U.S. standards, not on identical standards, so they wouldn't have to test twice. And they said, well, we could accept tests in certain labs in Europe but not in other countries.

I think we have now reached a stage where we ought to be able, at the very least, to test in each other's markets to each other's standards once, not duplicative testing. And you have a terrific role, because you oversee these independent agencies, to get them to think in a global fashion. And we have a regulatory forum between the U.S. and the EU to hopefully do that. But Congress can play a tremendous role here.

Ms. JENKINS. Thank you.

Thank you, Mr. Chairman. I yield back.

Chairman NUNES. Thank you.

Mr. Neal is recognized for 5 minutes.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Ambassador, just to let you pursue this a bit. We are used to setting the table in some of these areas. What suggestions would you make to our negotiators so that we might avert the problem of being pulled to the table? And you mentioned financial services earlier. And we have heard from agricultural interests, and I am sure we are going to hear from other sectional interests across the country. But in terms of financial services, how might you approach harmonizing some of the issues that you have already described?

Mr. EIZENSTAT. First of all, we really do have an exceptional nominee for United States Trade Representative. Mike Froman knows financial services, he has worked in that industry, he has worked globally, as the President's deputy for international economic advisor. And so I think we have got a good start there.

Second is just getting financial services, Mr. Neal, in the negotiations. They are not in.

Third, again, is getting the Treasury Department to take the role as the chair of the Financial Stability Oversight Council to coordinate our own regulatory actions—you have got agencies that are regulating extraterritorially, or proposing to do it—so when we come to the negotiating table with the EU on financial services, we have got a coordinated position taken by Treasury through the Financial Stability Oversight Council.

Next is, again, working on these market access issues. If we work together with our financial institutions to try to get access for our

banks and financial services to third countries that are keeping them out by having both the EU and the U.S. work together, that would be a huge advantage.

And then last, to the extent, again, that we can develop common regulatory approaches, it can set a standard for the world. I think that the U.S. wants to do this. I hope the barrier that one of the agencies doesn't want to include it in TTIP can be overcome.

Mr. NEAL. Thank you.

And, Mr. Slater, your description through your testimony about emerging and expanding localization barriers to trade, I guess better known as LBTs, they apparently condition market access for goods and services on, one, requirements to invest and develop or use local R&D, intellectual property, manufacturing, and assembly capabilities; two, mandate transfer technology to another party involuntarily; and, three, request to disclose proprietary information that would not typically be needed for regulatory purposes. How do you explain these barriers and how might they impact Intel and your operations in Massachusetts?

Mr. SLATER. Thank you, Congressman Neal. These are relatively new. Let me rephrase that. Some of the ones where they require local manufacturing content for government procurement preferences, those are old school. But what is new is they are going upstream to include intellectual property, to include R&D. And they are being linked, for example, buying spectrum. That is a Brazilian LBT. And they put companies in a tough situation. Do we expand at home—for example, in our case, at our facility in Massachusetts—or do we choose to expand in an emerging market where we may forgo a major market access opportunity.

These are new. The TTIPs should push back strongly against them, set the gold standard, and prohibit them entirely, and then commit the parties to promoting the prohibition in other FTAs and in other forums, because they are a pernicious form of NTBs. Some of them violate WTO, some of them fall between the cracks of WTO provisions. But they are relatively new and untested at this point. They started showing up in India and now other countries are looking at copying them.

Mr. NEAL. Thank you.

Thank you, Mr. Chairman.

Chairman NUNES. Thank you, Mr. Neal. Gentleman yields back.

Mr. Boustany is recognized for 5 minutes.

Mr. BOUSTANY. Thank you, Chairman Nunes.

And, Ambassador Eizenstat, I was really enthusiastic about your comments in your written testimony about the geopolitical implications of getting this done, and the kind of leverage we will have in dealing with rising economic powers like India, China, Brazil, and so forth, to get back to a rules-based trading system.

One of the most interesting aspects of these negotiations in my mind will be the effort to address a number of the 21st century issues that have not been traditionally covered in previous trade agreements. State-owned enterprises, you have talked about those. Competition, customs, trade facilitation, global supply chains, and cross-border data flows.

And I believe it is critically important that Congress develop and pass strong bipartisan trade promotion authority to set out the ne-

negotiating objectives for this negotiation. TPA will establish the framework for congressional consideration and implementation of the agreements, and it empowers the administration to negotiate and conclude the agreements.

So, just for the record, do you think these negotiations can be concluded and an agreement implemented without trade promotion authority?

Mr. EIZENSTAT. No.

Mr. BOUSTANY. Thank you.

Mr. EIZENSTAT. They can be launched, but they can't be concluded, because the EU is not going to accept our final deal if they know it can be second-guessed when it comes to Congress. So Congress has a huge role here. There hasn't been fast track or TPA authority for a number of years, either for a Republican or Democratic President. It is absolutely essential. It will be essential for the Trans-Pacific Partnership agreement to be concluded. But this is your chance to put an imprint on the TPA as well. So I think it is tremendously important and it is absolutely impossible to have a concluded agreement, in my opinion, either in the TPP in the Pacific or the TTIP without this trade promotion authority.

Mr. BOUSTANY. With regard to this agreement, could you discuss timing? Should we have trade promotion authority early in the process?

Mr. EIZENSTAT. The earlier the better.

Mr. BOUSTANY. Okay.

Mr. EIZENSTAT. And if you are going to have it, you might as well get it for TPP, for the services agreement—

Mr. BOUSTANY. Services agreement, yes.

Mr. EIZENSTAT [continuing]. The plurilateral service agreements. So I would put it all together in one, rather than having separate votes at separate times.

Mr. BOUSTANY. Thank you. Also, on a different subject, the U.S. and the EU have an existing regulatory dialogue called the Financial Market Regulatory Dialogue, or FMRD. And given the importance of this dialogue to ensuring the regulatory agendas of our country and the EU don't work at cross-purposes in global financial markets, doesn't this trade agreement present an opportunity to reinforce this type of dialogue?

Mr. EIZENSTAT. Absolutely. It should be seen as enhancing that dialogue and giving more structure and more discipline to it.

Mr. BOUSTANY. And if we are to include in the trade agreement newly expanded requirements of financial regulatory transparency principles for cooperation, impact assessment, and a mechanism for commenting and consulting on financial regulations that could lead to greater regulatory coherence, would this not advance the dialogue's hugely important task and benefit both financial services trade flows, not to mention manufacturing and agricultural trade flows that depend on efficient financial services?

Mr. EIZENSTAT. Yes, sir, it would. And, again, I would like if I could to just return to this broader theme. To the extent that the EU and the U.S. can agree on common approaches, that can become the world standard. And that means that our companies, whether in agricultural or manufacturing or financial services, have a tremendous leg up when they want to do business in third



markets because those third markets will be under a lot of duress to accept this common EU-U.S. approach.

If, on the other hand, we fail, you can be sure that China or other developing countries will be trying to get their standards approved. And so it is not just improving trade flows between the U.S. and EU, as important as that is, it is setting a standard for global approaches.

Mr. BOUSTANY. And that was what I referred to earlier in the geopolitical side of this in that as we have seen a stalling of Doha, how do we get back to a real rules-based trade system with good mechanisms for dispute resolution and so forth? And I see this as a strong vehicle to impress U.S. leadership in trade, and I am very excited about the prospects.

Mr. EIZENSTAT. Absolutely.

Mr. BOUSTANY. Thank you. I yield back.

Chairman NUNES. Thank you, Mr. Boustany.

Mr. Blumenauer is recognized for 5 minutes.

Mr. BLUMENAUER. Thank you.

Appreciate the opportunity for your easing us into some of these issues. There are certainly some, I think, significant opportunities. I appreciate notions of common accounting standards or, Mr. Eizenstat, your notion of bumpers, you know, might suffice if they meet the standards in either the EU or the United States.

And I do think your point about this perhaps being an easier entry point than what we have seen, at least in the 17 years I have watched these in Congress—some of them have been a little choppy—this could potentially be easier and perhaps serve as a template to do some other important things.

But I am interested in your thoughts about what we do to make sure that we avoid unnecessary conflicts, areas, for example, dealing with finance. There is some apprehension in terms of how far we go in standardization, given the fact that the United States is imposing a little more significant regulatory protections to avoid some of the problems we have had in the past. And there is some pushback with some of our friends in the EU making sure that whatever we are doing in this arena is not somehow as a backdoor effort to undo hard-fought efforts to prevent the next meltdown in the United States, or, for that matter, giving an undue advantage to some European institutions that wouldn't have to meet the same standards, although one has to note that some of these European institutions availed themselves to Fed facilities during the last meltdown. Do you have some thoughts on that?

Mr. EIZENSTAT. Yes. I feel quite confident in saying that the financial services industry does not want to use this as a backdoor way of diluting the standards and regulations which are necessary for consumer protection. And also I would say that, here again, having been ambassador to the EU and spent a lot of time in Europe, I can assure you that European financial regulators are just as interested in protecting their investors and their consumers as we are. We are not dealing with a Third World country; we are dealing with an institution that has very high standards themselves. The question is trying to get as much convergence, of not weakening standards. But if we can get that convergence, we can save an enormous amount of money.

Mr. BLUMENAUER. We are already seeing some apprehension in the United States. I am sure everybody has the same goal, but there is some concern that maybe there is some convergence into some areas that look a little riskier on the other side of the pond.

Mr. EIZENSTAT. That is not a concern I share.

Mr. BLUMENAUER. I am glad.

One other area that is of interest to me that is likely to come up when we are talking about agriculture. There is, as I understand it, a little different philosophy between the EU and the United States just in allowing consumers to know what they are buying. Products are routinely comprehensively labeled in the EU. In the United States, people do not have access to the same labeling.

Mr. Grueff, this would seem to be a pretty straightforward issue of transparency. Do you see this coming up, and thoughts about its resolution?

Mr. GRUEFF. Yes, sir. It is a very important issue. And I hope it does come up. Usually where this issue is most discussed and apparently has the most economic consequence is in the area of agricultural biotechnology, the mandatory labeling issue. And as you just described it, really at its root there are real cultural differences, societal differences, in terms of the consumer's right to know, the consumer's desire to know. And in the EU, there is a very strong feeling, I would say, among—I was stationed in Germany for 4 years myself—I would say among consumers that they want to have this information as to how the product was developed, was genetic engineering employed or not. That is important.

I would say generally, to American consumers that is not important. But we are all working under the rules of the WTO. So when it comes to mandatory labeling, I would say that the U.S. approach is that this is not a role where the government should be making this a trade barrier, that if consumers have an interest in knowing this information there will be a commercial response to that, companies will provide that information to them. And it really is not appropriate for WTO members to deal with each other in the way of making it mandatory.

Mr. BLUMENAUER. Is there any problem with just allowing—this is not an issue of scientific dispute, is it—knowing what it is that you are buying? This is not the same in terms of having some unusually artificial barrier to keep a product out, just allowing to know what it is.

Mr. GRUEFF. You are right. It is not a food safety issue in that sense. I would say—

Mr. BLUMENAUER. And it is not a pernicious thing, that somehow a barrier that can't be overcome or foreclosing a market.

Mr. GRUEFF. Well, it is a difficult issue and there is a lot to it. Part of the U.S. perspective I think is that when you require, when the government on either side of the ocean requires labeling that a product was genetically produced and there is no food safety issue, then why—

Mr. BLUMENAUER. Just letting people know what it is. Put aside whether it is genetically modified or not, that should not be a trade barrier, should it, just allowing people to know what they are buying?

Mr. GRUEFF. I think the issue from the U.S. perspective is, is the government requiring that companies label this for consumers. And then if you are——

Mr. BLUMENAUER. And you think that is an unnecessary trade barrier?

Mr. GRUEFF. Yeah, I mean, I would agree with U.S. perspective on this, that if this is an import requirement, this is a requirement that would be imposed on U.S. exports, that this product be labeled, then, yes, I——

Mr. BLUMENAUER. I think that, Mr. Chairman, just at some point I would be interested in exploring this a little bit. Because I think this puts us in a very weak position. I think it is 57 or 67 countries that allow consumers to know what they are buying, and that is part of what governments do. And I think if we fall on our sword over something like this, I think the public opinion is very much in flux over this, you have had a little experience in California, where there were tens of millions of dollars spent in an avalanche of kind of an exciting political campaign. We are not hearing the end of it. And I would just offer up that I think it would be interesting to explore it a little further. Because I think there are some real opportunities with this.

But this is an example of something that I think is a side issue that could, in fact, complicate this unnecessarily. I think we have got real issues that we want to contend with, with our European friends. This, I think, is a stupid fight, to prevent consumers from just knowing what they are getting. Picking a fight with Europe over this instead of going along with what many countries—I think a majority of people around the world have the right to know what they are purchasing. I think that that gets in the way of other objectives in the trade arena, and I would like a chance to explore that a little further at some point.

Mr. EIZENSTAT. If I can just add a perspective. I think it is a trade barrier. Certainly consumers should have the right to know what they are buying and what the components are. But when there is a non-scientific basis is for simply saying because something is genetically modified the implication is that it is dangerous and you don't approve it, that is wrong. That is a trade barrier. And I think now increasingly the EU is allowing more GMO products. It is fine to have consumers understand what has happened, what is in the component, but when you simply label something and then give the impression that that makes it dangerous, that can be——

Mr. BLUMENAUER. Your position, where people think if they know what it is that they won't buy it or if they know what it is that that is an implication that it is not appropriate to buy or it might be dangerous, I think is creating a false battle. And I am not prepared at this point—I mean, we can talk about what happens when you have got Round-Up-resistant weeds, which 49 percent of American farmers are finding now, and they are using even more pesticides.

But I think it is important for us to think about what it is worth going to the mat over when we are dealing with our friends in the EU with something that is probably going to be popping up in various States around the country. I think the first State that decides

that consumers have the right to know, I think you are going to see a lot of businesses fall off the bandwagon in fighting against allowing people to know what it is, because I think that creates the expectation or feeds the fear that there is something they shouldn't be able to know if you are not labeling it.

And I don't want to go into it further now, but I do want to explore it at some point, because I think it is going to create some unnecessary problems with this trade agreement, that we have got bigger fish to fry, like Intel people that I represent, where there are real battles on intellectual property, there are real battles on standards that matter and easing this forward. And this—

Chairman NUNES. I would like to thank my good friend from Oregon. And his time has expired.

Mr. Schock is recognized for 5 minutes.

Mr. SCHOCK. Thank you, Mr. Chairman. Thank you for hosting this meeting. And thank you to the panel of interesting witnesses.

First, I would like to start with Ambassador Eizenstat. You mentioned in your testimony the importance of TPA, not only to getting the agreement done, but actually in credibility with our negotiations. And so I thought I would just give you the opportunity to expand a little bit on that and talk to us about why TPA is important even just during the negotiating process.

And then our Congress, you heard our chairman at the opening of this committee, has expressed support for TPA. We need greater commitment from the administration to build support for this effort. And so from a Member of Congress' point of view, there seems to be only upside for the administration to ask for TPA, since it seems to be important for them in the negotiating process when it comes to credibility. But you have served in administrations, multiple administrations. Are there things we could be doing to help build support for TPA and encourage the Administration to be more involved?

Mr. EIZENSTAT. Well, Mr. Froman is going to be going through hearings on his appointment in the Senate. I would assume this would be some of the questions about TPA. I can't imagine the administration wouldn't want to have it. And if there is bipartisan support for it and if it can be indicated that there is bipartisan support, that this is not going to be a knockdown, drag-out, because the worst thing to happen, this really would throw a kink in the negotiations, is you launch in mid-July, which is what their hope is, these TTIP negotiations and then you end up having a bruising battle over fast track at the outset. So I think they may want to get some momentum in the negotiations.

But to the extent that the Congress can indicate that there is bipartisan support at the outset and that there won't be such a bruising battle, it gives them really a tailwind rather than a headwind. So I suspect that they are going to want some assurance that this will, in fact, be a bipartisan program and not one that, you know, ends up throwing, again, a curveball in the negotiations before they start. But I think what you are saying certainly should be welcome to the ears of the administration.

Mr. SCHOCK. Thank you. I wanted to address the intellectual property, not so much relative to the U.S.-EU agreement, but what the agreement between the U.S. and the EU's trade agreement will

mean for intellectual property right fights that we have for more developing countries. Most of the companies that do business in my district that are worried about their intellectual property being stepped on or stolen are not worried about a European Union country doing it. I am aware of multiple cases where the U.S. and the EU have already filed jointly cases before the WTO. And I am just wondering, in any of the panelists' view, whether a U.S.-EU agreement gives any more weight or ability for us to protect our IP in both countries or either country. In other words, does this have any impact on our fights in China and some of the other emerging markets?

Mr. EIZENSTAT. In my opinion—and I would like my colleague from Intel, I am sure this is a big issue—absolutely. If we can establish a really high level of intellectual property protection here and then work shoulder to shoulder against things like, you know, domestic innovation policies where they basically require forced technology transfers, compulsory licenses, a whole set of nontariff barriers in the IP area, this would be, I think, a big step forward in establishing the high standard of intellectual property protection around the world at a time when it is under enormous stress across the board.

So I think it would be a very big step. We do have strong protections already. But coming in a trade agreement where we do it jointly I think would have a very big impact on Third World and emerging markets.

Mr. SCHOCK. Any other panelists? Mr. Slater.

Mr. SLATER. If I may, Congressman Schock. I agree with what Ambassador Eizenstat said. I think that setting global principles on IP protection where we have a commonality of interests, not trying to harmonize the systems, but where we are concerned about Third World markets, and we are, would be very beneficial. Every initiative that I know where we have succeeded in pushing back in China on one of their indigenous innovation policies, it was because we cooperated with the EU and usually Japan. And formalizing that cooperation, making it actually binding and more detailed, would be very, very useful.

The other thing to keep in mind is the trade secret protection in the EU varies from member state to member state. The commission is looking at an EU-wide directive on trade secrets. TTIP could provide the momentum for them to go further down that road, and that would help. It is hard to argue to enhance trade secret protections if you, yourself, don't have the best standard in place.

Mr. SCHOCK. Well, I have more questions, but my time has expired. So thank you again for being here.

Thank you, Mr. Chairman, for having this meeting.

Chairman NUNES. Thank you, Mr. Schock.

Mr. Reichert is recognized for 5 minutes.

Mr. REICHERT. Thank you, Mr. Chairman.

I apologize for being late and missing some testimony, and I did get to catch part of the discussion, and I know that you have touched on this issue a little bit. But I just want to go back and maybe reemphasize your answers to a couple of questions.

I am from the State of Washington, and I have just acquired a new part of my district of some apple growers and some other agri-

cultural products. We are very excited about the opportunity of a trade agreement between the United States and the European Union. It offers critical opportunity for trade for that industry, and also for other businesses, of course, in Washington State. We are the most trade-dependent State in the Union, as probably all of you know.

It also provides a way to tackle some of the challenges facing Washington tree fruit growers, and even our dairy producers as they try to access the European market. Each year, on average, Washington exports 35 percent of its apple crop, and some of our dairy producers export as much as 50 percent of their product, but only a small amount of those products go to Europe. I am hearing from growers and dairy producers in my State about how non-science-based regulations and standards and other nontariff barriers are limiting their access to the European market. It is essential, I think all of us recognize, and as I said, I have heard some of the testimony, that these barriers be addressed in the negotiations.

Mr. Grueff, what do you think can be accomplished through these trade negotiations in this area?

Mr. GRUEFF. Well, I guess, bigger picture, in response to your question, our history with the EU, as I pointed out in my testimony, especially in the sanitary and phytosanitary area, the health-related area, has not been a good one. And, in fact, I would say that our way of trying to deal with these issues has been through WTO dispute settlement, which is really not a very good way to try to do this.

So this will really be the first time that we are going to have a structure, a forum for the U.S. and the EU to really focus on these issues. And so I am hopeful. I know that this is going to be very difficult, but I am hopeful that the opportunity will be used very productively.

As to your specific point about, for example, your district, for our, your district and the U.S. dairy industry, I think this is a very important opportunity for a number of reasons. One is the issue of geographical indications, which is generally viewed as an EU offensive issue. This is the issue of producers getting to keep the name of the original area where a product was produced, like Parma ham and so on. But our U.S. dairy industry says that they feel confident that they will have much better access to the EU market if there can be some agreement with the EU regarding some of the biggest issues regarding geographical indications in dairy, mozzarella and feta and so on, that if something could be worked out with the Europeans on this, our dairy industry is very optimistic about their opportunities in the EU market.

So this is an issue that I certainly expect will be part of the negotiations. And, again, it would be a platform, a structure or forum that we just haven't had. So this can provide some real opportunities.

Mr. REICHERT. I appreciate that. Thank you.

For Mr. Slater, another issue of importance to the businesses in my State that operate globally is the protection of cross-border data flow. In both the European Union and the United States, data privacy is protected, but we have different systems for providing that

protection. Respecting the difference of those privacy approaches, how can we ensure a robust protection of cross-border data flows?

Mr. SLATER. Thank you. I am encouraged by an exercise that is going on right now, where there is a mapping exercise between the corporate binding rules in the EU and the cross-border privacy rules that APEC has put together. And they are mapping out the similarities and differences to ensure interoperability as much as possible and then find a way to bridge the differences. I have talked to USTR about this, and I now want to encourage that approach and to, instead of trying to harmonize or trying to dilute the EU privacy regime that is to find a way to maximize interoperability and yet have a right to strong cross-border data flows. They are not inconsistent. And the EU, apparently, many of the officials in the EU want the freedom to have cross-border data flows because they recognize it is important to their own service industries.

So it is almost like you have to treat the two issues separately. And even though they obviously touch, they are heavily dependent on one another to make progress, but I am encouraged by what they are looking at right now.

Mr. REICHERT. I appreciate that. Thank you.

I yield back, Mr. Chairman.

Chairman NUNES. Thank you, Mr. Reichert.

Well, that concludes our hearing. I do want to thank the gentleman from New York for his cooperation on and bipartisan support for agreeing to all the witnesses. I think it makes for a much more productive hearing like we had today. And I especially want to thank all of the witnesses for their time and their patience dealing with our schedule. I hope we didn't make you late for any appointments, but we do appreciate your time.

And with that, the meeting is adjourned.

[Whereupon, at 4:22 p.m., the subcommittee was adjourned.]

[Submissions for the Record follow:]

**The Honorable Erik Paulsen**

**Statement for Record:**

**Committee on Ways and Means Subcommittee on Trade May 16, 2013 hearing on U.S.-EU  
Trade and Investment Partnership Negotiations**

Congressman Erik Paulsen:

Trade with the EU is incredibly important to our nation, but also invaluable to businesses, workers, and consumers in my home state of Minnesota. Last year, Minnesota exports to the EU reached **\$4 billion** and accounted for **20 percent** of state total exports.

Polaris is a thriving Minnesota-based manufacturer with over 5,000 employees worldwide. The company manufactures and sells off-road vehicles, snowmobiles, motorcycles, small electric vehicles, and a broad array of parts and accessories.

Polaris is growing quickly, especially in Europe, and would benefit greatly from reduced tariffs, regulatory harmonization, and stronger trademark and copyright protections.

Another Minnesota company excited about the TTIP is third party logistics provider C.H. Robinson. Headquartered in Eden Prairie, Minnesota, C.H. Robinson has over a thousand employees in my district. The company is a customs broker and handles ocean freight



shipments and air freight. As small and medium size companies across the Midwest grow and increase their exports, C.H. Robinson's business expands.

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## Handmade Toy Alliance



May 13, 2013

Ways and Means Committee Office  
1102 Longworth House Office Building  
Washington, DC 20515

Letter for the record: U.S. – E.U. Trade and Investment Partnership Negotiations

### Overview

The Handmade Toy Alliance (HTA) was formed in response to the Consumer Product Safety Improvement Act (CPSIA) passed in August of 2008 by the U.S. Congress. We are an alliance of 780 independent specialty toy stores, small batch toy makers and children's product manufacturers from across the United States and Europe who want to preserve access to unique handmade and small batch toys, clothes, and all manner of children's goods. The HTA seeks to:

- lend a voice to specialty toy stores, small batch toy makers and children's product manufacturers;
- assist in raising awareness of the issues that directly impact HTA members;
- provide HTA members access to their larger scale peers;
- support and promote HTA members.

The U.S. Consumer Product Safety Improvement Act drastically changed the landscape for producing and retailing specialty toys and children's products in the United States. Business is hampered by an arduous journey through a morass of regulations. Plentiful options of unique specialty products for filling store shelves withered away. Similarly, producers of small batch children's products in Europe saw their markets shrink and opportunities for expansion to the U.S. evaporate.

At the same time, there is a growing group of consumers who prefer durable toys that cater to a child's imagination and creative ability. Rather than entertain, small batch specialty toys encourage exploration, stimulate creativity and problem solving, promote playing together with others and allow growing confidence at the child's own pace.

Specialty small batch toys reach consumers at several thousand independently owned toy stores all across America and Europe. Generally, the inventory for these stores comes from three sources;

1. toys from the E.U. produced in small quantities by second tier companies,
2. domestically manufactured toys produced in small quantities by second tier companies,
3. and to a lesser extent – toys produced in larger quantities in the US, Europe and the Far East.

The CPSIA has negatively affected two of the three supply sources for specialty retailers. The primary cause of the supply chain disruption for these types of toys is similar but differing safety regulations in the U.S. and the European Union, (E.U.) As a result, many specialty toy stores have been forced to close or alter and rescale their businesses<sup>1</sup>.

<sup>1</sup> See listings - Partial List of Retail Businesses Altered or Closed Due to CPSIA - in the Appendix

**Letter for the record: U.S. – E.U. Trade and Investment Partnership Negotiations**



Independently owned specialty toy stores are economically viable because they differentiate themselves from mass market retailers selling children's products mass produced in the Far East. Providing unique and distinctive children's products affords them opportunity as well as a reason to exist. Without this distinction there is no practical way to compete with mass market retailers, no business opportunity, and no reason to exist.

The Handmade Toy Alliance (HTA) represents these specialty retail stores and they comprise 25% of our membership. We also represent the domestic small batch producers and those who import and produce European small batch items.

**The E.U. Predicament**

Certainly there are small batch toy manufacturers all over the world, but by-and-large, those large enough to consider international markets are concentrated in the European Union. These second tier companies often produce toys by hand within Europe and not in completely automated factories. They employ workers from their communities and are important in their local economies. Typical yearly revenue for a second tier manufacturer ranges from €3 million to €30 million.

The countries that make up the E.U. already have stringent toy regulations in place as does the U.S.

**European Union** – EN-71 European Toy Safety Standard and the recent Directive 2009/48/EC.

**United States** – CPSIA and ASTM F963-11 Toy Safety Standard

These toy safety standards share some commonality, but because the standards are not identical, small batch manufacturers in Europe and the U.S. are forced to perform multiple additional tests in Consumer Product Safety Commission (CPSC) approved labs. The economic burden of additional tests required by the dissimilarities makes it extremely difficult to economically bring these products to market in the U.S. or the E.U. Many small batch toy suppliers from the E.U. have been forced to cease exports to the U.S. or limit the number of products they export<sup>2</sup>. It is not that the products these companies produce are not safe, but that the economics of compliance with two differing safety standards is unaffordable. The CPSIA and EN-71 place a trade barrier between European small batch manufacturers and U.S. specialty retailers and to a lesser extent also between U.S. small batch manufacturers and European specialty retailers.

Typical testing costs for compliance and certification to EN-71, the European Union toy safety standard, range from \$1,000 to \$3,000 per product. The additional costs for third party testing for certification to the CPSIA and ASTM F963 range from \$750 to \$2,500. When manufacturing batch quantities that are typically less than 500, the amortization of these costs results in price increases that cannot be borne by the manufacturer, the importer, nor the consumer. It's an easy to understand equation:

$$\text{Additional cost to manufacture each product} = \text{additional batch testing cost} / \text{batch size.}$$

Large multinational companies producing toys have found ways to comply with both U.S. and E.U. regulations without significant economic burden through special rulings like firewalled labs and batch sizes that are well past 10,000 units, even into the hundreds of thousands. These companies also have the legal staff and infrastructure to navigate the myriad of regulations that apply. Second tier companies have none of these possibilities available to them.

Yet these small batch toys and these countries have not been the source of unsafe products. The safety record of small batch toys produced in Europe and the U.S. is exemplary. The Consumer Product Safety Commission's recall data show no recall activity from small batch manufacturers in these jurisdictions in 2011 and 2012. In the past four years, out of 155 recalls for toys, only 2 have been from the European

<sup>2</sup> See listings - Partial List of Businesses within E.U. Limiting or Ceasing Export to the USA - in the Appendix

*Letter for the record: U.S. – E.U. Trade and Investment Partnership Negotiations*



Union and neither of those from a small batch manufacturer. We must go all the way back to 1999 to find a recall from a small batch manufacturer in the E.U.

It is clear that both U.S. and E.U. toy safety standards work to provide excellent protection for consumers in both regions. The HTA supports a process of mutual recognition of toy safety standards by each jurisdiction to restore free and unencumbered trade of these products.

The H.R.2715 Attempt at U.S. Recognition of EN-71

For three years, the Handmade Toy Alliance worked on Capitol Hill for a legislative fix for these unintended consequences caused by the CPSIA. We wrote letters, worked on language, testified before Congress, attended hearings and markups, visited Senators and Representatives, all to have our collective voice heard. There was wide agreement within Congress that relief should be provided for businesses represented by the HTA. This culminated in the passing of H.R.2715 in August of 2011 that has provisions that are a direct outgrowth of our work.

Specifically, attempts at legislative relief for the international small batch supply chain appear in two sections of the Consumer Product Safety Act (CPSA) as amended by H.R.2715.

- First, section 14(d)(3)(A)(v) under REDUCING THIRD PARTY TESTING BURDENS,

"... (A) *ASSESSMENT.*— Not later than 60 days after the date of enactment of this paragraph, the Commission shall seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. The request for public comment shall include the following:

... (v) The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this Act.

- and second, 14(d)(4)(A)(iii) under SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.

"... (A) *SPECIAL CONSIDERATION; EXEMPTION.*—

... (iii) *CERTIFICATION.*—In lieu of or as part of any alternative testing requirements provided under clause (i), the Commission may allow certification of a product to an applicable consumer product safety rule, ban, standard, or regulation, or portion thereof, based on documentation that the product complies with another national or international governmental standard or safety requirement that the Commission determines is the same or more stringent than the consumer product safety rule, ban, standard, or regulation, or portion thereof. Any such certification shall only be allowed to the extent of the equivalency with a consumer product safety rule, ban, standard, or regulation and not to any other part of the consumer product safety rule, ban, standard, or regulation.

... (E) *DEFINITIONS.*— For purposes of this paragraph—

(i) the term 'covered product' means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year; and

(ii) the term 'small batch manufacturer' means a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year. The dollar amount contained in this paragraph shall be adjusted annually by the percentage increase in the Consumer Price Index for all urban consumers published by the Department of Labor."

The driving force behind this language was the lobbying effort of the HTA for the restoration of small batch supply across the Atlantic. It was a first attempt at mutual recognition, from the U.S. towards the E.U. toy safety directive.

The CPSC has already requested comments as required under the clause 14(d)(3)(A)(v) REDUCING THIRD PARTY TESTING BURDENS and CPSC staff has prepared a document titled "*Consideration of Opportunities to*

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*Reduce Third Party Testing Costs Consistent with Assuring the Compliance of Children's Products*, dated August 29<sup>th</sup>, 2012. This document includes the following language:

*"Staff recommends that the Commission consider creating, maintaining, and recognizing a list of equivalent tests in international standards, conformity to which would be indicative of conformity to the corresponding test in a CPSC-administered children's product safety rule.*

*While no other international standard is identical to a CPSC-administered children's product safety rule, there are many tests within certain other international standards that are the same, or that are more stringent than, their equivalent test within the CPSC-administered children's product safety rule. For example, the toy abuse tests in the European standard EN71, part 1, and the International Standard ISO 8124-1 are the same, or more stringent than, their corresponding tests in ASTM F963-11. Recognizing other international standards, or tests within a standard, as equivalent to a CPSC rule, could allow children's product certifiers to avoid repeating some third party tests for the same product and directly avoid additional testing costs, while assuring compliance to the applicable children's product safety rules. This scheme could be used for certification, material change, and periodic testing purposes. Harmonized or equivalent tests would be required to be conducted by a CPSC-accepted testing laboratory. Thus, a project to consider establishing equivalency between tests in our regulations and comparable international standards must also consider how third party conformity assessment bodies will be accredited to perform tests to such standards.*

*It is possible that an effective implementation of this recommendation could result in a significant reduction in third party testing costs that might be realized by many manufacturers."*

Subsequently, the CPSC Commissioners voted to move forward on this issue, but then chose not to fund the effort during the 2013 budget year. It does show that the staff of the CPSC sees significant cost reduction benefit in recognition or harmonization with the E.U. safety standard. This in turn provides opportunity for restoration of small batch toy commerce across the Atlantic.

The subsection (iii) of SPECIAL RULES FOR SMALL BATCH MANUFACTURERS indicates that the CPSC may accept compliance with an international standard as an alternative test when it is determined to be "the same or more stringent" than what is required by the CPSA. The intent being that if a small batch product is already undergoing third party tests to ensure safety and if those tests prove to be adequate, then that small batch product should be allowed entry to the specialty toy market in the U.S.

This small batch rule includes the definition of the size of the manufacturer as one that has revenue of less than \$1 million yearly and produces no more than 7,500 units of the same product in the period of one year. The definition serves to limit the size of a company that can benefit from the small batch rule. Unfortunately the definition excludes second tier small batch manufacturers within the U.S. and those in the E.U. through the revenue cap. This definition of a small batch manufacturer actually only encompasses the smallest of businesses and home-based crafters rather than the manufacturer that actually produces product in small batches.

The CPSC has also interpreted the law so that in cases where a combination of a foreign manufacturer and a domestic importer bring product to the U.S. that the rule applies to both. This interpretation renders any hope that legislative relief might be applicable for a small importer useless as a means for breaking the small batch children's product trade barrier between the U.S. and E.U. For instance, it was previously common for a small importer to bring products from a few European second tier manufacturers to the U.S. and to distribute those products to specialty retail.

**The Birthing of H.R.2715**

It is instructive to see the progression of the language chosen to provide relief for European and U.S. small batch producers on the legislative side. The working bill preceding H.R.2715 was H.R.1939, also known as

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ECADA. That bill included no language referencing international toy standards. Full markup of that bill was cancelled the morning of June 2<sup>nd</sup>, 2011, but Congressman Pitts was prepared, with bipartisan support, to offer an amendment to H.R.1939 that allowed for the use of an international toy safety standard for compliance. It included language that read “substantially equivalent or more stringent.”<sup>30</sup> This amendment never had opportunity to be offered.

Then on August 1<sup>st</sup>, 2011, the confluence of three forces caused movement of a different CPSIA fix – H.R.2715.

1. The retroactive 100 ppm lead limit approved by the CPSC two weeks earlier,
2. The need to increase the U.S. debt ceiling to avoid a default a day later,
3. and Congress’ desire to start August recess.

H.R.2715 was created, passed through the House under suspension of rules and then through the Senate by unanimous consent because the collision of these circumstances created a necessity to move quickly without the usual due process. So it is even remarkable that the Pitts amendment, which was never offered, was split into two and included in H.R.2715 as detailed above. This indicates congress does have a desire to remove the trade barrier.

Unfortunately, the degree of equivalency for toy safety standards was tightened to be “same” rather than “substantially equivalent.” It is one step short of recognition of E.U. toy safety standards.

*Routes for Relief*

We are left to sort out the details and what possibilities are available for relief from this predicament.

Under current legislation, this boils down to the following possibilities:

1. Have the CPSC recognize European Union toy safety standards as an adequate alternate test for certification of product – as a “reasonable method” for a small batch manufacturer – and increase the financial cap for definition of a small batch manufacturer to a level that allows actual second tier small batch product to navigate the trade barrier.

This requires legislative action to change the revenue cap for the definition of a small batch manufacturer to include 2<sup>nd</sup> tier manufacturers in Europe. Alternatively, a method for allowing a U.S. based importer to be subject to the revenue cap once for each foreign company it imports provides a starting point towards a permanent solution.

2. Provide relief through CPSA section 14(d)(3)(A)(v) under REDUCING THIRD PARTY TESTING BURDENS. This is outside the small batch provisions of H.R.2715 and provides a route for relief in a broader context. This includes actively seeking mutual recognition of toy safety standards between the U.S. and the E.U.

The CPSC must be pressured to act on this issue to provide tangible results rather than issuing hollow edicts that go nowhere. The legislation allows for this to occur, but there is presently no willingness within the leadership of the Commission to make the commitment to actually reduce the regulatory burden in this way.

*Conclusion*

Independently owned specialty toy stores help to ensure diversity and enhance consumer choice in the children’s product marketplace, both in the U.S and the E.U. Toys sold by these retailers encourage and stimulate a child’s imagination and provide alternatives to mass produced toys that simply entertain. Since August of 2008 when the CPSIA was signed into law, the number of specialty toy stores in America has been decreasing, and safe small batch products from the E.U. have gradually left the U.S. market.

<sup>30</sup> See text of Amendment to be Offered to H.R.1939 in the Appendix

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Requiring these second tier manufacturers who already comply and test to rigorous standards, to do it all over again, and absorb the costs, just to enter the market is a functional trade barrier and causes economic hardship for retailers, importers, and second tier manufacturers and does nothing to improve safety. The end result is: fewer specialty toy shops, less jobs, limited choice for consumers in the U.S., and a shrinking market for small batch producers in the U.S. and the E.U.

To this point, efforts by the U.S. Congress and the CPSC to solve this problem and remove the trade barrier have been ineffective and half-hearted.

We urge Congress, with the Transatlantic Trade and Investment Partnership group and to actively work for mutual recognition of U.S. and E.U. toy safety standards, the most rigorous and comprehensive toy safety standards in the world.

Respectfully,

Randall Hertzler,  
Vice President of Handmade Toy Alliance Board of Directors – [www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)  
President euroSource LLC – [www.eurosourcellc.com](http://www.eurosourcellc.com)

Jolie Fay – President, Board of Directors  
Erika Hickey – Secretary, Board of Directors  
Mary Newell – Treasurer, Board of Directors

Lynn Persson – Board of Directors  
Adam Frost – Board of Directors  
Stephanie Stewart – Board of Directors

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## Appendix

Partial List of Retail Businesses Altered or Closed Due to CPSIA (Compiled 2009 – 2011)

A Cooler Planet – Chicago, IL	Mahar Dry Goods – Santa Monica, CA
A Kid's Dream – Conway, AK	Moon Fly Kids – Las Vegas, NV
Attic Toys – Naples, FL	Nova Naturals – Williston, VT
Baby and Beyond – Albany, CA	Obabybaby – Berkeley, CA
Baby and Kids Company – Danville, CA	OOP! – Providence, RI
Baby Sprout Naturals – Fair Oaks, CA	Oopsie Dazie – South Jordan, UT
Bellies N Babies – Oakland, CA	Phebe Phillips, Inc. – Dallas, TX
Black Bear Boutique – Portland, OR	Red Rock Toys – Sedona, AZ
Creative Hands – Eugene, OR	Storyblox – New Vienna, OH
Curly Q Cuties – Texas	Sullivan Toy Co. – Jenks, OK
Due Maternity – San Francisco, CA	The Green Goober – Minneapolis, MN
Eleven 11 Kids – Santa Rosa, CA	The Kids Closet – Rochester, IL
Essence of Nonsense – St. Paul, MN	The Learning Tree – Chicago, IL
euroSource LLC – Lancaster, PA	The Lucky Pebble – Kailua, HI
Fish River Crafts – Fort Kent, ME	The Perfect Circle – Bremerton, WA
Gem Valley Toys – Jenks, OK	The Wiggle Room – Slidel, LA
Hallina's Closet – Ellensburg, WA	Toy Magic – Bethlehem, PA
Honeysuckle Dreams – Rockville, MD	Toys From The Heart – Royersford, PA
Kidbean – Asheville, NC	Urban Kids Play – Seattle, WA
Kungfubambini.com – Portland, OR	Waddle and Swaddle – Berkeley, CA
LaLaNaturals.com – Bellingham, WA	Whimsical Walney, inc. – Santa Clara, CA
Lora's Closet – Berkeley, CA	Wonderment – Minneapolis, MN
Magical Moon Toys – Logan, UT	Wooden You Know – Maplewood, NJ

Partial List of Businesses within EU Limiting or Ceasing Export to the USA due to the CPSIA (Compiled 2009 – 2011)

Bartl GmbH dba Wooden Ideas – German	Joal – Spain
Brio – Sweden	Kathe Kruse – Germany
Castorland – Poland	Kinderkram – Germany
Detoa – Czech Republic	Margarete Ostheimer – Germany
Eichorn – Germany	Saling – Germany
Finkbeiner – Germany	Selecta Spielzeug – Germany
Gollnest & Kiesel KG (GOKI) – Germany	Siku – Germany
HABA – Germany	Simba – Germany
Helga Kreft – Germany	Woodland Magic Imports – France
Hess – Germany	

Letter for the record: U.S. – E.U. Trade and Investment Partnership Negotiations



Amendment to be Offered to H.R. 1939

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 1939  
OFFERED BY MR. PITTS**

Page 15, line 2, strike "testing" and insert "bases  
or".

Page 16, after line 4, insert the following:

1           "(C) ALTERNATIVE BASES.—The alter-  
2           native bases or procedures for certification for  
3           any product described in subparagraph (A)(iii)  
4           may include evidence that the product conforms  
5           with a standard or safety requirement, includ-  
6           ing an international standard or requirement,  
7           that the Commission determines is substantially  
8           equivalent or more stringent than the applicable  
9           consumer product safety rule."







10 May 2013

Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Outline of Industry Objectives & Relationship Between:  
Transatlantic Trade and Investment Partnership (TTIP) & EU-U.S. Insurance Dialogue**

**Introduction**

The American Council of Life Insurers and Insurance Europe strongly support the intent to negotiate a Transatlantic Trade and Investment Partnership (TTIP). The transatlantic insurance relationship constitutes the largest such economic relationship in the world with bilateral trade and investment in the insurance sector alone exceeding \$185 billion dollars a year.

However, as recognized by the High Level Working Group (HLWG) in its final report, more can still be done to “strengthen the contribution of trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness.” We agree and believe it to be especially true of the insurance sector, which would significantly gain from inclusion in a TTIP.

In its final report the HLWG suggested that negotiations on a comprehensive trade and investment agreement should aim to achieve ambitious outcomes in three broad areas:

- Market Access
- Regulatory issues and non-tariff barriers; and
- Rules, principles, and new modes of cooperation to address shared global trade challenges and opportunities

Insurance is a highly regulated sector. Therefore, although we see benefits stemming from enhanced market access and establishment of rules, principles, and new modes of cooperation to address global challenges and opportunities, we believe the greatest benefits for our industry will come from addressing regulatory issues.

### Market Access

Consistent with their commitments under World Trade Organization's (WTO) General Agreement in Trade on Services (GATS), we would like to see the EU and U.S. work towards full market access and national treatment for the insurance sector, including freedom from restrictions on the specific types of legal entity through which services are delivered.

While this is an important goal, we recognize, due to financial stability, investor or policyholder considerations, challenges will arise. Where this is the case we would like to see a list of non-discriminatory prudential carve-outs detailed. In addition, we believe the negotiations of a TTIP should establish a transparent consultation process for the establishment of any such carve-outs and going forward a process for the discussion of the application of such provisions. This will provide transparency with regard to where restrictions remain, as well as hopefully a list of issues to be addressed in the future.

### Regulatory Issues

We appreciate the HLWG recognizing the important role regulation plays in generating greater economic growth and jobs. We also applaud the HLWG for understanding the complexity of regulation and making the distinction between it and conventional barriers to trade. As noted above, insurance is a highly regulated industry which we believe has much to benefit from greater regulatory cooperation, understanding and ultimately recognition of where the same regulatory outcomes are achieved through different means.

A practical example of where this would be beneficial can be seen in the area of group supervision. Many European and American insurers have a significant amount of their premium originating from the other side of the Atlantic, which is either transacted on a cross border basis, or through establishing branches or subsidiaries. The companies conducting these business transactions increasingly find themselves subject to duplicative regulatory requests; with supervisors, including those only supervising solo entities, wanting to gain a more holistic view of an entire insurance groups operation. We would therefore, like to see greater cooperation and coordination between the supervisors involved and, ultimately, recognition of robust supervision conducted elsewhere.

We recognize that this will require an innovative approach with both sides needing to be creative, flexible and open-minded in developing negotiating solutions which respond to the specific characteristics of our industry. To these ends we are very supportive of the insurance dialogues currently being conducted between the EU-U.S. and the publication of a Technical Report summarizing the output of their dialogues in December 2012. Publication of the report signifies the end of Phase I of this exercise. Phase II which has now commenced is intended "to lead to policy decisions by the respective organizations, regarding whether and how to achieve further harmonization in regulation and supervision".

Alongside the final Technical Report, a “Way Forward Document” was also published at the end of 2012 setting out common objectives and initiatives to be pursued over the next five years. We hope this closer regulatory cooperation should address issues of key concern to our respective insurance markets, namely collateral requirements for reinsurance and Solvency II equivalence. These work plans will take time to implement, but commitment to achieving an agreed end goal has never been higher.

Thus, we believe that the TTIP agenda for insurance regulatory matters should not seek to duplicate the insurance dialogues which are already on-going, but rather it should be complimentary, providing political support to ensure milestones are met in a timely manner and the current level of momentum is maintained. We also welcome the increased transparency to stakeholders over the last 12 months and in particular the publication of the Technical Report. We would like to see this continued through the publication of an annual report on the pace of progress going forward.

#### **Cross-Cutting Regulatory Issues**

In addition to market access and the focused work of the regulatory dialogue project, we would also welcome the inclusion of cross cutting disciplines, regulatory best practices, transparency requirements, and new regulatory cooperation tools in the TTIP which would be applicable to all regulatory decision-making, including those decisions impacting financial services regulations, including insurance. These cross-cutting regulatory obligations should recognize existing U.S. and EU domestic laws and rules. We would like to suggest the following items for inclusion:

- Establishment of a mandate that encourages all regulators to strive to determine and reach equivalence between regulatory frameworks based on outcomes even as those outcomes may be achieved in different ways.
- Development new tools that include a trigger, methodology, and transparent process for review of both ex-ante and ex-post regulations deemed to be important to the transatlantic economy.
- Commitment to avoid the imposition of trade restrictive measures and limit extraterritorial impact of regulatory decisions, including for example those on the cross border provision of auxiliary services such as data processing.
- Establishment of a political level mechanism at the highest levels within both governments to review regulatory cooperation efforts across all sectors with the expectation of delivering incremental progress.

#### **Global Trade Challenges and Opportunities**

The EU and U.S. together represent 74% of global premium income. Working together we can make an important contribution to the shape of global insurance supervision and regulation. Many of the same regulatory issues that are being discussed bilaterally are also topics for discussion in the international forums such as at the International Association of Insurance

Supervisors (IAIS) and Financial Stability Board (FSB); therefore, any agreements reached through the TTIP must not be viewed in isolation, but rather in the context of the global discussions.

In addition, in the Final Report of the HLWG, the U.S. and the EU agreed to reach a bilateral agreement on “globally relevant rules, principles or modes of cooperation” in a number of thematic areas, including state-owned enterprises (SOEs) benefitting from subsidies and other governmental privileges. In insurance SOEs have distorted markets in a number of major countries, and it is therefore appropriate for the U.S. and the EU to work together to develop “globally relevant” principles to address market distortion by SOEs.

#### **Conclusion**

In conclusion, we believe that the goal of the insurance industry – to protect policyholders from risks while ensuring financial security – is consistent with the stated goals of the U.S. and EU leadership when it formed the HLWG. Insurance is a fundamental ingredient for creating a robust and seamless economy that can sustain growth and job creation on both sides of the Atlantic. As such we hope that financial services and specifically insurance will be viewed as a key component of the TTIP.



**American Farm Bureau**



**Statement of the  
American Farm Bureau Federation**

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**STATEMENT TO THE  
SUBCOMMITTEE ON TRADE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
FOR THE HEARING ON  
U.S.-EU TRADE AND INVESTMENT PARTNERSHIP NEGOTIATIONS**

**May 16, 2013**

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The American Farm Bureau Federation, a U.S. general farm organization, supports efforts to increase agricultural trade flows and remove several major impediments to this flow that currently exist between the United States and the European Union (EU). The upcoming trade negotiation must deal with the many substantive issues that impede agricultural trade between the U.S. and the EU, including long-standing barriers against conventionally raised U.S. beef, ongoing restrictions against U.S. poultry and pork, and actions that limit U.S. exports of goods produced using biotechnology.

The U.S. and the EU are major international trading partners in agriculture. U.S. agriculture and food producers exported over \$8.8 billion to the EU in 2012, while the EU exported over \$16.6 billion worth of agriculture and food products to the U.S. in 2012. However, this trade could be considerably higher if barriers to trade were removed. Just ten years ago the EU was the third-largest destination for U.S. agricultural exports; today it has fallen to be our fifth-largest market. Over the last decade growth of U.S. agricultural exports to the EU has been the slowest among our top ten export destinations. If provided an improved opportunity to compete, the EU market provides many growth opportunities for the goods produced by U.S. farmers and ranchers.

Regulatory barriers have become a significant impediment to the growth of U.S. agricultural trade with the EU. Unless these issues are properly addressed within the Transatlantic Trade and Investment Partnership (TTIP) we can expect these barriers to continue to limit the potential of bilateral agricultural exchange between the U.S. and the EU. As a result, it is imperative to Farm Bureau that TTIP be a high-standard trade agreement that covers all significant barriers in a single comprehensive, agreement. Regulatory cooperation on removing these barriers and developing uniform standards recognized on both sides of the Atlantic must adhere to sound, recognized, scientific principles. Scientific standards can be the only basis for the resolution of existing issues.

Continuing barriers to the export of U.S. beef, pork and poultry, along with the slow approval process for biotech products, are major areas of interest in the negotiation. Both the U.S. and the EU adhere to the World Trade Organization's (WTO) Agreement on Sanitary and Phytosanitary (SPS) Measures, which states that measures taken to protect human, animal or plant life or health should be science-based and applied only to the extent necessary to protect life or health. The U.S. follows a risk-assessment approach for food safety while the EU is additionally guided by the "precautionary principle" which holds that where the possibility of a harmful effect exists, non-scientific risk management strategies may be adopted.

The EU has made the "precautionary principle" the focus of its approach to risk management in the SPS area. The use of the "precautionary principle" is inconsistent with the WTO SPS Agreement and is used as a basis for scientifically unjustified barriers to trade. The "SPS-Plus" chapter must result in a modern, science and risk-based approach, based on international


standards, that can truly resolve SPS disputes. SPS issues must be directly addressed as a part of the negotiations and these provisions must be enforceable.

The EU approach for approving the products of biotechnology combines a lengthy approval process with the ability of EU member states to ban approvals. Substantial declines in the exports of corn and soybeans to the EU have been the direct result of restrictive import policies. The EU system for regulating biotech products must be science-based and efficient in generating approvals for U.S. products.

The EU system of geographic indications (GIs) for foods and beverages designates production from a specific region as legally protected for original producers. The U.S. has opposed recognizing geographical names for foods that would inhibit the marketability and competitiveness of U.S. food products. The TTIP must not become an avenue to erect a new barrier to U.S. agricultural exports through the use of geographic indications.

With regards to tariff barriers, the negotiation proposal calls for working towards the elimination of tariffs. The average U.S. tariff for imported agricultural products is 5 percent, with 75 percent of tariff lines at zero to five percent tariff. For the EU, the average tariff on imported agricultural imports is 14 percent, with 42 percent of tariff lines at zero to five percent tariff. In order to expand market opportunities for U.S. agricultural products in the EU tariff reductions will be necessary.

We call for an ambitious agreement that addresses the real barriers to the growth of agricultural trade between the United States and the EU. As major agricultural trading partners the U.S. and the EU must work to improve the conditions of trade between themselves and remove long-standing trade barriers. Farm Bureau looks forward to working with this committee to achieve the goal of an agreement that expands trade with the EU for the benefit of America's farmers and ranchers.



### Regulation in the Transatlantic Trade and Investment Partnership

Susan Ariel Aaronson

After years of talk, the twenty-seven democracies of the European Union are launching negotiations with the United States for a free trade area called the Transatlantic Trade and Investment Partnership or T-TIP. The marriage of the US and the EU has huge implications for the global economy. If policymakers succeed at negotiations, they could create a free trade area comprising some 40% of world GDP. However, the negotiations have even more important implications for the future of democracy than the expansion of trade.

Trade diplomats from both the US and EU say they want to create a 21<sup>st</sup> century trade agreement. They stress that in order to achieve that goal, they must not only reduce visible barriers to trade such as tariffs, but also achieve coherence among a wide range of social and environmental regulations. Policymakers plan to discuss US and EU regulations protecting consumers such as food safety and data protection rules; regulations affecting how business is conducted such as banking and labor regulations; and regulations affecting the global commons such as environmental regulation. They note that although these regulations have legitimate objectives, these regulations may, without deliberate intent, distort trade. If they can find common ground on these regulations, trade would be eased. However, neither the US nor the EU has made it clear whether the end goal of regulatory coherence is harmonization, convergence, or some form of safe harbor or mutual recognition (where both countries accept the regulations of another country without demanding change).

Trade negotiators may find coherence between US and EU regulations is not easy to achieve. First, both the EU (at the national and EC-wide level) and the US have honed these regulations over time based on public and business comments. Whatever their opinion about particular regulations, the public accepts these regulations as democratically determined and hence, legitimate. US and EU citizens may not feel the same about regulatory compromises developed in secret by trade negotiators. Secondly, the US and the EU have very different approaches to designing and implementing such regulations; these differences stem from two very different approaches to democratic capitalism and governance. In general, the EU focuses on risks to society from not regulating; US regulators focus on the risks to market forces, and thus, tend to prefer that the private sector self-regulate. The two trade giants also have different regulatory strategies. The EU tends to regulate in a top down, state-controlled manner with labor, business and civil society input. The US, in contrast, tries to encourage business self-regulation and when directly regulating tries to use regulation that encourages market forces (such as transparency) rather than the visible hand of government. Thus, trade diplomats may



find that some citizens may oppose T-TIP because they believe attempts to achieve regulatory coherence mean deregulation or defining regulations downward.

Given the stakes for democratically determined regulation for both the US and the EU, the public should have direct input into the negotiation. But that is not the current strategy. Trade policymaking in both the US and the EU remains stuck in a 19<sup>th</sup> century time warp of opacity and secrecy. While trade negotiators require secrecy to discuss sector-specific tariffs or business confidential information, it is hard to understand why such secrecy should apply to the negotiation of chapters on regulatory issues such as labor rights, internet issues, environmental issues etc... Diplomats have long argued that secrecy builds trust among nations, as they can count on other diplomats to keep information confidential. But in this type of negotiation, trade diplomats don't really need to keep the objective, strategy and progress confidential. In fact, when trade policymakers keep so much of the negotiation from the public, they may engender public distrust.

Trade policymakers in both the US and EU have taken some steps to seek public comment before the negotiation begins. But neither the US nor the EU have clearly delineated how policymakers will incorporate these comments as the negotiations proceed.

The US has also not met promises made by the Obama Administration to ensure transparent, accountable governance. Although the Obama Administration has made "openness" a meme of this Presidency, openness has not characterized the Administration's approach to trade policymaking. When he campaigned for President, then Senator Obama promised to restore the American people's trust in their government by making government more open and transparent. When he attained the Presidency, he issued the Open Government Directive in 2009, requiring government agencies to go public with their data. The regulation was designed not only to make government agencies more accountable, but also to create economic opportunities. On May 9 2013, OMB issued a new regulation on open data which declared, "information is a valuable national resource...Making information resources accessible, discoverable and usable by the public can help...improve Americans' lives." But the Administration does not fully and consistently share information related to trade negotiations with the public at large. The Office of the US Trade Representative (which is in charge of negotiating for the US) could use its web site to facilitate a broader dialogue with more Americans concerned about trade. Currently, the site is basically a dissemination device and is not interactive.

In general, trade policies in both the US and EU are determined by senior government officials who are responsive to a small group of concerned citizens/business interests. The US Trade Representative does allow some individuals greater insights into the negotiations.

Cleared advisors, including some members of Congress and Congressional staff are allowed to see up to date information about the negotiations, but they are required to keep this information secret. The bulk of these advisors represent commercial and economic interests and/or individuals with connections to the current administration. Neither the US nor the EU has developed an advisory committee infrastructure to examine how to achieve regulatory coherence in a transparent accountable manner. So here are two suggestions.

First, Congress and the EU Parliament should keep a close watch on negotiations to achieve regulatory coherence. Congress and the Parliament should also clarify whether coherence means harmonization, mutual recognition or some other approach. Secondly, USTR and other agencies involved in the negotiation should become more proactive as well as more interactive online. The Administration should develop a web site encouraging consistent public feedback and dialogue on T-TIP, rather than solely at the beginning and end of the negotiations. The web site should clearly delineate the objectives of the regulatory coherence negotiations as well as the Administration's desired outcome. The web site should also include updates that describe the state of ongoing negotiations for each chapter of the proposed agreement, particularly those that relate to environmental and social regulations.

Regulatory coherence is an important objective for the US and the EU. If the two trade behemoths can find common ground on regulations in a transparent and accountable manner, their shared standards will set the bar for the global economy and facilitate high standards worldwide. Moreover, the trade agreement will reflect 21<sup>st</sup> century standards for transparency and accountability in democratic governance.

Susan Ariel Aaronson is Associate Research Professor, Institute of International Economic Policy, GWU, and the Minerva Chair at the National War College.



# IPMI



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### Via Electronic Submission

May 10, 2013

The Honorable Demetrios J. Marantis

Acting U.S. Trade Representative

Office of the United States Trade Representative

Executive Office of the President

600 17th Street, N.W.

Washington, DC 20508

Re: Comments on "Transatlantic Trade and Partnership"  
Docket Number USTR-2013-0019

Dear Ambassador Marantis:

The International Precious Metals Institute (IPMI) is pleased to submit this letter in response to the United States Trade Representative's (USTR) request for comments to assist USTR as it works to develop negotiating objectives and principles for a proposed Transatlantic Trade and Investment Partnership (TTIP) agreement with the European Union (EU).<sup>1</sup> IPMI is an international association of producers, refiners, fabricators, scientists, financial institutions, merchants, private and public sector groups, and the general precious metals community formed to provide a forum for the exchange of information and technology. IPMI seeks and promotes the efficient and environmentally sound use, reuse, and recycling of precious metals from both primary and secondary sources. Our members engage in the global trade of precious metal commodities and products. IPMI's members thus have a direct and substantial interest in USTR's efforts to enter into a TTIP with the EU, and generally support the overall effort.

There are many issues associated with transatlantic trade and investment that are of import to IPMI members. The one of paramount importance, however, is the manner in which EU member nations apply their national waste regulatory schemes to the classification of materials generated from production processes that contain economically significant concentrations of precious metals. Our members trade in precious metal commodities that are intermediate products, *i.e.*, materials that IPMI members have processed, homogenized, sampled, and assayed for precious

<sup>1</sup> USTR solicited comments on this issue on April 1, 2013. 78 Fed. Reg. 19566.

IPMI is an international association of producers, refiners, fabricators, scientists, users, financial institutions, merchants, private and public sector groups, and the general precious metals community formed to: (1) provide a forum for the exchange of information and technology; (2) seek and promote the efficient and environmentally sound use, reuse, and recycling of precious metals from both primary and secondary sources; (3) conduct educational meetings and courses; (4) disseminate information for the public, industry, and government agencies worldwide and (5) recognize excellence and achievement through awards to individuals and educational institutions.

The Honorable Demetrios J. Marantis  
May 10, 2013  
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metal content. There is a competitive world market among secondary copper smelters for these materials, which constitute the bulk of our trans-Atlantic trade.

These materials are an integral part of our members' trade due to their precious metal content. They are handled in a manner commensurate with their high value. The environmental regulatory agencies of some EU nations, however, regulate these precious metal intermediates as wastes subject to the Basel Convention and to the Organization for Economic Cooperation and Development (OECD) restrictions on the "Control of Transboundary Movements of Wastes Destined for Recovery Operations" as interpreted by individual EU member countries and their environmental and customs officials. The resulting complex web of regulatory requirements and the conflicts inherent in labeling as green or amber waste and as hazardous materials under the Globally Harmonized System means that transporting the intermediates across borders may be subject to significant delays -- both prior to shipment and at border crossings -- and, in extreme cases, may not even be allowed to proceed.

This is an excellent illustration of likely unintentional conflicting regulatory regimes that thwart commercial interests and the greater good. IPMI believes that these materials are commercial intermediate products and should be recognized as critical feedstocks in the precious metals manufacturing continuum. Harmonizing this approach will ensure that a handful of EU Member States do not hamstring this long-established global trade in a valuable commodity. IPMI thus urges USTR as part of the TTIP negotiations to seek harmonization of the manner in which the EU members and the U.S. regulate these materials. Specifically, we write to seek USTR's support in ensuring that the trans-Atlantic flow and trade of these materials is not hampered by the misapplication of waste directives that were never intended to govern non-waste materials, such as our members' prepared sweeps.

Precious metals play an integral role in manufacturing, energy, and other sectors, from the catalysts used in the petrochemical refining sector to the precious metals utilized in advanced medical equipment. For millennia precious metals have spurred innovation and economic growth. This is as true today as it ever has been, and it applies equally in the EU as well as the U.S. Private companies and governmental agencies use precious metals in a wide array of applications that play important roles in our daily lives. But differing application of waste regulatory policies adversely affect how these precious metals are treated. This is a clear barrier to trade. These non-tariff trade barriers should be addressed for critical raw materials if the U.S. and the EU wish to maintain their international edge in leading the development of new technology.

IPMI will consult with our European colleagues on this issue via Eurometaux, the European Association of Metals. We foresee sharing common issues on this important matter with Eurometaux members. Following these consultations, IPMI intends to approach USTR to discuss potential paths forward.

Thank you for the opportunity to provide this comment. Please contact either J.P. Rosso at 951-928-0532 ([jpr@ipmi.org](mailto:jpr@ipmi.org)) or Barbara A. Curtis at 610-971-3055 ([curtiba@imusa.com](mailto:curtiba@imusa.com)) should you have any questions or require additional information.

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The Honorable Demetrios J. Marantis  
May 10, 2013  
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Respectfully submitted,



J.P. Rosso  
Executive Director  
IPMI



Barbara A. Curtis  
Chair  
Environmental & Regulatory Affairs Committee  
IPMI

## NAM



Jay Timmons  
President and CEO

March 27, 2013

President Barack Obama  
The White House  
Washington, DC 20500

Dear Mr. President:

The National Association of Manufacturers (NAM) welcomes your announcement that the United States and the European Union will launch formal trade agreement negotiations. As the largest industrial trade association in the United States, representing 12,000 small and large manufacturers in every industrial sector and in all 50 states, the NAM has long been an advocate of launching formal U.S.-EU trade talks that will open markets, eliminate barriers, cut trading costs and put in place strong rules to make U.S. manufacturers more globally competitive. Similar trade agreements have been a proven success for the United States, with manufacturing exports to just our 20 free trade agreement partners accounting for nearly half of U.S. manufacturing exports to the world in 2012.

The NAM agrees with the High Level Working Group's call for a comprehensive agreement that addresses a broad range of bilateral trade and investment issues that will put both our economies in a stronger economic position globally. In addition to seeking the elimination of tariffs, the NAM urges that the Trans-Atlantic Trade and Investment Partnership address effectively the many non-tariff barriers (NTBs) to trade and investment, from duplicative and contradictory regulatory and sanitary and phytosanitary rules to barriers produced by differing standards, conformity assessment and certification procedures. Improving rules on trade facilitation, investment and intellectual property, among other core rules, are critical to lower the cost of trans-Atlantic trade, create new commercial opportunities and codify improved commercial rules throughout the global trading system.

As your Administration prepares to engage in detailed negotiations, the NAM urges that great care be taken to ensure that the ultimate outcomes of this agreement are ones that enhance competitiveness, economic growth and jobs. A successful U.S.-EU trade deal will be one that removes unnecessary impediments to manufacturing growth and does not create new ones. Regulatory outcomes, for example, must be designed to favor markets and adhere to sound principles of science, risk assessment and cost-benefit analysis. More broadly, a growth-producing U.S.-EU agreement will enhance manufacturing competitiveness and commercial opportunities, and not impose rules or seek to harmonize standards that would undermine the United States' dynamic labor market, strong intellectual property protections, or other policies that promote innovation. Proposals to adopt burdensome non-commercial standards – from labor and privacy, to environmental and non-risk based regulations – would not only stall the negotiations, they would undermine the ability to create the economic growth both our economies seek.

*Leading Innovation. Creating Opportunity. Pursuing Progress.*

733 10<sup>th</sup> Street, NW • Suite 700 • Washington, DC 20001 • P 202.637.3043 • F 202.637.3460 • [www.nam.org](http://www.nam.org)

The NAM looks forward to working with your Administration and Congress to ensure that the ultimate U.S.-EU agreement will produce meaningful new commercial opportunities and reduce costs and barriers for our manufacturers in order to spur economic growth and job creation on both sides of the Atlantic. To ensure that these negotiations are successful and can be fully implemented, we also urge you to work intensively with Congress to ensure the renewal of the Executive-Congressional trade negotiating authority framework – Trade Promotion Authority – as soon as possible.

Sincerely,

Jay Timmons

JT/jl

**Public Citizen**



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4896 • [www.citizen.org](http://www.citizen.org)

**HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE  
HEARING ON U.S.-EU TRADE AND INVESTMENT PARTNERSHIP NEGOTIATIONS**

**COMMENTS CONCERNING THE PROPOSED  
TRANS-ATLANTIC FREE TRADE AGREEMENT**

**FILED BY  
PUBLIC CITIZEN**

**MAY 14, 2013**

## Comments Concerning the Proposed Trans-Atlantic Free Trade Agreement

Public Citizen

May 14, 2013

Public Citizen welcomes the opportunity to provide written comment to be included in the record of the House Ways and Means Trade Subcommittee hearing on the proposed Trans-Atlantic Free Trade Agreement (TAFTA), also known as the Transatlantic Trade and Investment Partnership. Public Citizen is a national, nonprofit public interest organization with 150,000 members and supporters that champions citizen interests before Congress, the executive branch agencies and the courts. We have conducted extensive analysis on the impacts and implications of existing U.S. trade and investment agreements, the expansive model of trade and investment terms that the Obama administration has pursued in the Trans-Pacific Partnership "Free Trade" Agreement (FTA), and the U.S. and EU policies that would be implicated if the TAFTA negotiations were to be based on such an approach.

The TAFTA negotiations will focus primarily on "regulatory and other non-tariff barriers," according to the joint U.S.-EU announcement of the intent to launch negotiations.<sup>1</sup> The decision to concentrate on "behind-the-border"<sup>2</sup> policies stems from the Parties' acknowledgement that tariffs between the United States and EU are "already quite low."<sup>3</sup>

**Public Citizen believes that advancement of consumer well-being must be the primary goal of any U.S.-EU pact.<sup>4</sup> We are skeptical that a deal built on regulatory convergence will serve consumer interests. But if this approach is taken, such convergence must result in a regulatory floor that bolsters consumer interests, not a regulatory ceiling that constrains them.** If uniform standards are adopted, they must reflect a high degree of consumer protection while also preserving governments' prerogative to establish facially non-discriminatory protections that are stronger than the established minimum standards. A deal that dismantles existing EU or U.S. consumer protections, or that constrains governments' ability to enact stronger protections, would be unacceptable.

Consumers have different priorities in different countries. Differences in regulatory standards between countries with different constituencies and priorities should be expected and respected as the legitimate outgrowth of trade between democratic nations, such as those contemplating TAFTA.

However, the process leading to the launch of TAFTA negotiations has been dominated by attempts to eliminate regulatory distinctions for the sake of narrow business interests. Industry representatives organized since 1995 as the TransAtlantic Business Dialogue, recently renamed the Transatlantic Business Council,<sup>5</sup> have pushed for "harmonization" of divergent standards and elimination of "trade irritants" with the singular goal of easing their commercial activities.<sup>6</sup> This framework not only threatens to weaken critical consumer and environmental safeguards, but at its core conflicts with the principle that those living with the results of regulatory standards – consumers – should be able to set those standards through the democratic process, even when doing so results in divergent standards that businesses may find inconvenient.

It is not apparent that any efficiency gains resulting from regulatory convergence would a) significantly accrue to consumers rather than simply increasing the profit margins of business interests, b) outweigh consumers' loss of ability to set and modify, through democratic processes, the regulations that affect them, or c) justify the considerable expenditure of limited government staff and resources to engage in multi-year negotiations between Parties with already low tariffs.<sup>7</sup> Before adopting a regulatory convergence approach in TAFTA negotiations, the United States and EU should establish a transparent process to study and provide answers to these critical questions, inviting early and consistent input from a diverse array of consumer groups and other stakeholders.

If TAFTA proceeds with the approach of trying to establish uniform standards, then the established standard should be set as a regulatory floor, not a ceiling. Using a floor rather than a ceiling safeguards the ability of a country to maintain or establish stronger standards when consumers demand such. This approach also provides nations the needed policy space to create new regulations in response to emerging policy challenges and crises. Given that trade agreement rules are not easily altered and that negotiators do not have the ability to see into the future, such flexibility is essential. If uniform standards are actually found to provide efficiency gains to consumers that outweigh the above concerns of autonomy loss and resource expenditure, then a common regulatory floor set at the highest standard of any involved country would still provide efficiency gains without sacrificing consumer protections. Providing a quantum of such gains while still maintaining consumers' rights to higher standards is a balanced approach. The United States and EU should exclude from the pact any sector or regulatory area where they cannot agree on this floor-not-ceiling framework. In addition, some areas should clearly be excluded at the outset.

Any standard-setting terms in TAFTA must strengthen consumer protections in critical policy arenas, including the following:

- **Food Safety:** Any rules on chemical residues, veterinary drugs, additives, contaminants, slaughter and processing, inspection, or labeling must be limited to requiring that policies be non-discriminatory. An agreement must clarify that application of the same standard to domestic and foreign goods meets such a non-discrimination test. Each nation must be allowed to set non-discriminatory standards based on consumer demands and priorities alone. This includes labels providing consumers with pertinent information, such as a product's country of origin, inclusion of genetically-modified organisms, slaughter standards and more. That is, consumers must be able to express their demands with respect to the appropriate level of protection and provision of information as long as domestic and foreign goods fall under the same standard.
- **Financial Stability:** Any harmonized standards must set a floor of strong financial regulation, based on the most robust U.S. and EU reregulation efforts, to reflect the lessons of the deregulation-fueled financial crisis of 2007-2009. Countries that wish to go beyond this standard to safeguard financial stability must have the policy space to do so, particularly as new financial products and challenges emerge. Critically, the agreement must clarify that a non-discriminatory regulatory ban of a product or service is not a violation of Market Access terms, nor are facially neutral policies that limit firms' size or



the legal forms through which a particular product or service may be offered. The pact should also explicitly safeguard the ability of countries to enact controls on capital inflows or outflows – policy tools now officially endorsed by the International Monetary Fund as legitimate for preventing or mitigating financial crises.<sup>8</sup> In addition, the negotiations must establish a broad exception for prudential measures that improves on the prudential exception in Article 2 of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) Financial Services Annex, which contains language that some have interpreted as eviscerating the defense's practical application.<sup>9</sup>

- **Climate Security:** Any agreement must provide policy space for signatory countries to respond to the emerging climate crisis, affecting all involved nations, with stronger policies to control greenhouse gas emissions. The setting of agreement terms for energy, transportation and other relevant sectors should conform to this goal. Nations must be permitted to go above and beyond any agreed-upon standard to more thoroughly mitigate climate change via policies such as feed-in tariffs, emissions-based taxation and performance standards. Any agreement must clarify that countries may distinguish between forms of energy generation in developing regulatory approaches. Any chapter on technical standards, services, subsidies or investment must explicitly provide policy space to enable or encourage climate-friendly adaptations (e.g. greater energy efficiency, stronger abatement requirements).<sup>10</sup>
- **Internet Freedom and Access to Affordable Medicines:** Overreaching patent and copyright provisions in past "trade" agreements and copyright enforcement proposals such as the Stop Online Privacy Act (rejected by the U.S. Congress) and the Anti-Counterfeiting Trade Agreement (rejected by the European Parliament) have threatened consumers' access to an open Internet and affordable medicines. The United States and EU already provide robust patent and copyright protections without the addition of such sweeping terms. Consumers, meanwhile, must maintain their ability to use the Internet freely without censorship or fear of reprisal, and must not be subjected to increased healthcare costs for the sake of pharmaceutical corporations' narrow business interests. To ensure the protection of these consumer rights, this prospective agreement must exclude intellectual property provisions, including those relating to patents, copyright, trademarks and data protection.<sup>11</sup> If any such intellectual property rights provisions are included despite the threat to consumers' interests, broad exceptions and limitations on intellectual property rights must be included to safeguard consumers' access to affordable medicines and an open Internet. In this scenario, governments must have the policy space to name exceptions or limitations that are stronger than the established minimum to further safeguard their consumers' interests.

**Any agreement must not include the extreme investor-state dispute resolution (ISDR) mechanism, nor the open-ended substantive investor privileges included in past U.S. FTAs and U.S. and EU Bilateral Investment Treaties (BITs).**<sup>12</sup> ISDR allows foreign investors to directly challenge sovereign governments over contested public interest policies in tribunals that operate completely outside any domestic legal system. The ostensible premise for such an extreme procedure is that some domestic legal systems are too corrupt, incompetent or ill-equipped to hear foreign investors' claims. Neither the United States nor any EU member state is likely to assert that this description befits the legal system of any nation involved in this

agreement. Given the advanced domestic legal systems that exist, the anomalous extrajudicial enforcement provided by ISDR is absolutely unacceptable for TAFTA. Its untenable inclusion would empower foreign firms to attack domestic policies that have been deemed legal under domestic court systems, while empowering tribunals comprised of three private attorneys, who rotate between serving as “judges” and litigating against governments, to order government compensation for the enforcement of those policies.<sup>13</sup>

Were substantive investment rules akin to those found in U.S. FTAs or U.S. and EU BITs to be included in TAFTA, it would establish greater substantive “rights” for foreign investors than those provided to domestic firms by the robust property rights protections of existing U.S. and EU law. Such broad “rights,” coupled with the extreme discretion enjoyed by investor-state tribunals, would significantly hamper each government’s ability to regulate on behalf of its consumers. Existing FTAs and BITs grant foreign investors sweeping privileges, such as a “minimum standard of treatment” that inventive tribunals have interpreted as investors’ right to obtain compensation for any government action or policy that contravenes the investors’ expectations.<sup>14</sup> On the basis of such terms, a growing number of costly ISDR cases have been launched against nondiscriminatory consumer and environmental policies, consuming government resources and imposing an unacceptable ceiling on governments’ ability to enact policies to achieve the critical public interest goals stated above.<sup>15</sup>

**Given that TAFTA could implicate a wide swath of domestic non-trade policies (e.g. environmental, financial, energy, patent, copyright, procurement, health and product safety policies), the respective legislatures must establish binding goals for the negotiations before talks begin.** The process of establishing goals, in addition to the negotiations themselves, must be open and transparent. After the legislatures set binding objectives for the talks, negotiators must consult throughout the negotiation process with diverse legislative committees, including all those with jurisdiction over any implicated non-trade policies, to ensure those objectives are being fulfilled. Any resulting agreement should not be signed unless and until the U.S. and EU legislatures approve the proposed text through a vote that affirms it has met the established objectives.

The process for establishing any agreement that could impact a broad array of public interest policies must also be open to the public. Negotiating texts and country submissions for TAFTA must be made publicly available. Stakeholder groups, including those not granted preferential access to official trade advisory committees, must be able to review the proposed text if they are to give meaningful input on the critical policy decisions at issue. Consultations with diverse stakeholders should occur early on and throughout the process. The disproportionate consultation with business and industry groups in prior agreements has resulted in a narrow array of input and a deprioritization of consumers’ interests, which should stand at the heart of any resulting deal.

#### ENDNOTES

<sup>1</sup> “Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso,” The White House, Feb. 13, 2013. Available at: <http://www.usra.gov/about-us/press-office/press-releases/2013/february/statement-US-EU-Presidents>.

<sup>2</sup> “Final Report,” High Level Working Group on Jobs and Growth, Feb. 11, 2013. Available at: <http://www.usra.gov/sites/default/files/02132013%20FINAL%20HLWG%20REPORT.pdf>.

<sup>3</sup> “Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership,” Office of the U.S. Trade Representative, March 20, 2013. Available at: <http://www.ustr.gov/about-us/press-office/press-releases/2013/march/administration-notifies-congress-ftip>.

<sup>4</sup> This objective and many of the following recommendations echo the TAFTA position statement of the Trans Atlantic Consumer Dialogue. See “EU and US consumer groups’ initial reaction to the announcement of a Transatlantic Trade and Investment Partnership,” Letter from the Trans Atlantic Consumer Dialogue to Ambassador Ron Kirk and Commissioner Karel De Gucht, Mar. 5, 2013. Available at: [http://taacd.org/index2.php?option=com\\_docman&task=doc\\_view&gid=353&Itemid=10](http://taacd.org/index2.php?option=com_docman&task=doc_view&gid=353&Itemid=10).

<sup>5</sup> “History and Mission,” Transatlantic Business Council, accessed Apr. 6, 2013. Available at: <http://transatlanticbusiness.org/history-mission/>.

<sup>6</sup> “The Transatlantic Economic Partnership: Overview and Assessment,” Directorate General for Trade of the European Commission, Oct. 2000, at 5. Available at: [http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc\\_111712.pdf](http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111712.pdf).

<sup>7</sup> In a December 2012 survey of U.S. federal agencies, 58 percent of staff in the Office of the U.S. Trade Representative reported that, even without TAFTA, they did not have enough resources to carry out their existing work, while only 24 percent said they did have sufficient resources. “New USTR Will Face Many Challenges, Including Staff Dissatisfaction,” *Inside U.S. Trade*, Feb. 15, 2013.

<sup>8</sup> See “The Liberalization and Management of Capital Flows: An Institutional View,” International Monetary Fund, Nov. 14, 2012. Available at: <http://www.imf.org/external/hippp/eng/2012/11/14/12.pdf>.

<sup>9</sup> “Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.” WTO, General Agreement on Trade in Services, Annex on Financial Services, Article 2(a).

<sup>10</sup> An example of one such approach is Article 8.2(c) of the WTO’s Agreement on Subsidies and Countervailing Measures. Such a provision, without the time limit, is one way policy space for climate-related policies could be provided.

<sup>11</sup> For a list of the dozens of other major U.S. and EU organizations supporting this position, see “IP out of TAFTA: A Civil Society Declaration,” Mar. 2013. Available at: <http://www.citizen.org/documents/IP%20out%20of%20TAFTA%20with%20Logos-revisednew.pdf>.

<sup>12</sup> The Final Report of the High Level Working Group on Jobs and Growth, seen as establishing the framework for TAFTA, includes the worrying recommendation that “a comprehensive U.S.-EU trade agreement should include investment liberalization and protection provisions based on the highest levels of liberalization and highest standards of protection that both sides have negotiated to date.” This text implicitly backs the unacceptable replication of past FTAs’ overreaching investor privileges, both procedural and substantive, in TAFTA. More explicitly, the EU draft negotiating mandate openly calls for “indirect expropriation” and other sweeping, regulation-undermining terms of prior FTAs to be copied in TAFTA, along with the extreme “investor-to-state dispute settlement mechanism.” High Level Working Group on Jobs and Growth, “Final Report,” Feb. 11, 2013, at 3. Available at: <http://www.ustr.gov/about-us/press-office/reports-and-publications/2013/final-report-us-eu-hlwg>.

<sup>13</sup> “Text of EU Draft Mandate,” Mar. 12, 2013, at 15. Available at: [http://www.s2bnetwork.org/files/mandate/eu/en/downloads/EU\\_Draft\\_Mandate...\\_Inside\\_US\\_Trade.pdf](http://www.s2bnetwork.org/files/mandate/eu/en/downloads/EU_Draft_Mandate..._Inside_US_Trade.pdf).

<sup>14</sup> For a summary of ISDR cases and claims brought against public interest policies under U.S. FTAs, see “Table of Foreign Investor-State Cases and Claims under NAFTA and other U.S. Trade Deals,” Public Citizen memo, Mar. 2013. Available at: <http://www.citizen.org/documents/investor-state-chart.pdf>.

<sup>15</sup> See Lori Wallach, “Fair and Equitable Treatment and Investors’ Reasonable Expectations: Rulings in U.S. FTAs & BITs Demonstrate FET Definition Must be Narrowed,” Public Citizen memo, Sept. 5, 2012. Available at: <http://www.citizen.org/documents/MST-Memo.pdf>.

<sup>16</sup> The United Nations Conference on Trade and Development estimates that the cumulative number of ISDR cases ballooned from 50 in 2000 to 514 in 2012. UNCTAD, “Recent Developments in Investor-State Dispute Settlement,” IIA Issues Note, May 2013, at 3. Available at: [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).

## Shellfish Growers Association

### Reduce Our Trade Deficit with Europe - Restore Exports of Molluscan Shellfish

Since 2009 the European Union has banned the imports of molluscan shellfish from the United States. While EU regulators claim that the ban is a result of health risks associated with US shellfish, we suspect that the ban is retaliatory and punitive and not based on actual human health issues. FDA inspectors have audited certain EU member states and found significant deficiencies in their shellfish sanitation program that preclude their imports into the US. In apparent retaliation, EU regulators have alluded to various concerns related to US products, however FDA officials feel these concerns are not justified and are not based on valid significant health concerns.

EU markets represent a significant export opportunity for US producers, however we are unable to identify the dollar value of exports prior to the 2009 trade restrictions. The shellfish producers in the US have been working diligently for several years in an effort to resolve the impasse without success. We are hopeful that high-level efforts to resolve non-tariff trade barriers with the EU will allow us to restore trade in shellfish with EU customers.

#### Background

In 2009 the EU Directorate General for Health and Consumers removed the US from the list of countries permitted to export bivalve mollusks and other fishery products to the EU. The decision was based on indicated differences between the American and EU sanitary standards for live bivalve mollusks. The report highlighted issues with *Vibrio* bacteria associated with oysters from the Gulf of Mexico. Subsequently the United States and the European Union agreed to examine the reciprocal equivalence between US and EU sanitary standards for bivalve mollusks, however to date there has been no agreement of equivalence.

The FDA molluscan shellfish safety program regulates foreign imports under the Import Seafood Products Compliance Program 7303-844 (FDA) in cooperation with the NOAA Seafood Inspection Program. The FDA has negotiated agreements (MOUs) with those countries that have shellfish sanitation programs that have been evaluated and are judged to be equivalent with our program (New Zealand, Canada, Mexico and Korea, but not the EU). FDA audits of EU growing grounds and shellfish sanitation practices had determined that the EU program has deficiencies that make their products unsuitable for import to US markets.

The US imports 91 percent of its seafood resulting in an annual \$10.4 billion seafood trade deficit (FishWatch). Meanwhile major oyster producers in the EU have suffered 40-80 declines in production due to diseases (Perneti). Meanwhile, the US has enjoyed significant growth in the shellfish farming industry, particularly on the East Coast (Murray, 2012).

For several years shellfish industry representatives have travelled to Washington DC to meet with members of Congress and top officials from the FDA in an effort to resolve this issue. In January 2012 the FDA offered to send auditors over to inspect three clean water sites in EU states in the hopes that they could allow specific harvest areas to import into the US (as they do for other MOU nations). It was our hope that this would break the impasse and bring negotiators back to the table. However, in January 2013 the FDA reported that they had not sent auditors and that they now saw no way to resolve the impasse. The FDA offered no timeline for action and provided little hope for resolution. The FDA also acknowledged that while they believe EU shellfish sanitation standards are inadequate, they did not anticipate that EU producers would ship much product to US markets if they were permitted to do so. EU shellfish prices are significantly higher than those in the US so there is a financial disincentive to send shellfish to the US. (The exception would be for mussels that carry little health risk since they are typically cooked).

The FDA rightly believes that there should be no equivalency requirement (our ability to export should not be contingent on their ability to export to us). Each nation should make these decisions based solely on independent assessments of public health considerations. Unfortunately, it appears that contingency and retaliation are dominant concerns in this case, preventing honest negotiations to resolve the issue.

FDA officials met with EU counterparts in December of 2012, however little progress was made. The EU negotiator continues to highlight two issues with US product: 1) US regulators do not require monitoring for all marine biotoxins (PSP, Red Tide etc) - and 2) we cannot seem to eliminate or control for the naturally-occurring bacterium *Vibrio vulnificus*. In the US rigorous biotoxin monitoring is conducted by state shellfish control authorities and is required in states that have experienced problems. (NSSP 2009 Section II Chapter IV - Shellstock Growing Areas, 2009, p. 04 Marine Biotoxin Control). The FDA notes that we have not had a biotoxin-related illness from commercially harvested product in decades. While *Vibrio vulnificus* bacteria are a management challenge, they are primarily associated with warm water production with the vast majority of cases associated with Gulf Coast oysters harvested during warm-weather months. *V. vulnificus* associated with shellfish consumption causes only about 35 illnesses a year

Several years ago the FDA visited some of the growing areas in the EU to assess their sanitation program for equivalency. Our standard is based on water quality measurements while the EU monitors bacteria levels in shellfish meats (CODEX). Studies comparing our water standard with the CODEX meat standard indicate that clean EU Class "A" areas are equivalent to the US "approved areas." The FDA's problem with the EU meat standard arises in growing areas near population centers, where depuration or purging of contaminants is required. In these areas the FDA believes that the EU standard does not provide an adequate level of protection from enteric viruses.

It is notable that Canada has Shellfish Sanitation Program that is essentially identical to ours, however Canada and the EU do have an active MOU based on equivalency. Canada complies with the EU requirements by testing for marine biotoxins and performing additional meat testing for exports. Because of recent budget cuts the FDA is considering equivalency under a HACCP approach where the monitoring and reporting are the responsibility of the exporting country.

ECSGA is contacting the legislative offices that indicted they might help on trade about this meeting and hoping that maybe one of them will have an idea how to move this issue forward. The Senate HELP committee has jurisdiction (Mikulski-MD, Whitehouse-RI, Murphy-CT, Warren-MA). (n.d.). FDA. (n.d.). Food Guidance Compliance Regulatory Information. online. FishWatch. (n.d.). [http://www.fishwatch.gov/farmed\\_seafood/outside\\_the\\_us.htm](http://www.fishwatch.gov/farmed_seafood/outside_the_us.htm). Murray, T. J. (2012). Situation and Outlook Report. VIMS, Virginia Sea Grant Marine Extension Program. Gloucester: Virginia Institute of Marine Science. Perneti, F. B.-F. (2012). Mass mortalities of Pacific oysters *Crassostrea gigas* reflect infectious diseases and vary with farming practices in the Mediterranean Thau Lagoon, France. *Aquaculture Environment Interactions*, Vol.2: 215-237. USFDA. (2009). NSSP 2009 Section II Chapter IV - Shellstock Growing Areas. National Shellfish Sanitation Program.

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**USIFI and IFAI****IFAI** INDUSTRIAL FABRICS  
Association International**UNITED STATES INDUSTRIAL FABRICS INSTITUTE  
INDUSTRIAL FABRICS ASSOCIATION INTERNATIONAL****STATEMENT FOR THE RECORD****U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS  
TRADE SUBCOMMITTEE****HEARING ON U.S.-EU TRADE AND INVESTMENT PARTNERSHIP NEGOTIATIONS  
MAY 16, 2013**

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide a statement for the record on the proposed Transatlantic Trade and Investment Partnership (TTIP) on behalf of the United States Industrial Fabrics Institute (USIFI), a special interest group of the Industrial Fabrics Association International (IFAI).

USIFI and its parent organization IFAI represent some of the most technically-advanced and state-of-the-art manufacturing facilities in the world with U.S. employment of approximately 160,000 highly-skilled workers spanning almost every state in the Union. Our member companies manufacture highly-specialized products and advanced materials for numerous industrial and military applications. Examples would include ballistic, shelter, chemical-biological-radiation-nuclear protection textiles; potable water and fuel fabrics and bladders; and transportation, housing and roofing construction fabrics. These advanced material components are used to support a variety of high-value-added and sophisticated industries including aerospace, automotive, medical, and energy production.

Our companies also partner with U.S. military and academic institutions for research and development that has resulted in significant U.S. investments in more advanced and sophisticated manufacturing, including textile fibers, fabrics, and finishes with cutting-edge properties. The U.S. technical textile industry is a success story – expanding, efficient, advanced and leading the world in innovation.

In the past, USIFI has been skeptical of entering into free trade agreements with major textile exporting countries who buy comparatively few of our textile products in return. In contrast, we are not averse to pursuing a trade agreement with the European Union, a market with per capita income and consumer buying power close in line with the United States. Because the EU countries have the capability and track record of purchasing U.S.-made goods, they are a more logical FTA partner than, for example, Vietnam under the Trans-Pacific Partnership (TPP) negotiations. Two-way trade between the U.S. and

EU in textiles has been roughly balanced historically, and there are also high levels of foreign investment in each other's markets.

While we are generally favorable towards the concept of a U.S.-EU FTA, the agreement could quickly become detrimental to our industry depending on the details of the agreement. Specifically, we have four main concerns:

**Separate Textile Chapter**

- Rule of Origin
- Tariff Phase-Out Schedule
- Customs Enforcement

**Government Procurement**

**Regulatory Barriers**

**Value-Added Tax**

Please be aware that this is not an exhaustive list but instead is designed to give a general overview of our key areas of concern with regard to any EU agreement.

**Separate Textile Chapter**

We note that textiles and apparel have always been treated as an independent chapter under U.S. free trade agreements. This policy should be continued. It is essential that textiles and apparel be handled as a separate negotiating group, distinct from other manufacturing sectors in the TTIP negotiations. Textiles are a complex area of U.S. trade policy with unique sensitivities compared with virtually all other industrial sectors. As a result, these products are not suitable for treatment under a generic formula for all manufacturing products. Moreover, trade that would be covered in a separate textile chapter is not small. Two-way trade between the United States and European Union in textiles and apparel totaled \$6.2 billion in 2012. If Turkey is included, that total grows to \$7.2 billion.

Within a specific textile and apparel chapter under the TTIP agreement, we support the following concepts:

**Yarn-Forward Rule of Origin**

USIFI strongly supports a yarn-forward rule of origin for textiles and apparel and favors its adoption for the TTIP. Yarn forward is the accepted rule of origin for the industry and is incorporated into nearly all U.S. free trade agreements and preference arrangements dating back to NAFTA. As the name implies, all stages of production starting with yarn spinning, moving to fabric formation and the final product assembly must be done either in the United States or in a FTA partner country to qualify for duty-free treatment.

It is also vital that all textile components in both technical fabrics as well as garments (including linings, narrow elastic fabrics, sewing thread and pockets) be covered by the rule of origin and be required to originate in parties to the agreement in order for the finished product to qualify. This insures that significant sectors of the U.S. textile industry which produce these component materials see benefits from the agreement.



Yarn forward is a logical rule because the vast majority of the value of a finished textile or apparel product comes from its components rather than final assembly. Allowing high value-added elements of the production chain to take place outside of the contracting FTA countries transfers benefits to third countries which have not had to make market-opening concessions in return. Specifically, China is well-positioned to take advantage of a single transformation rule or double transformation rule if incorporated in the TTIP. China shipped 7.1 billion euro (\$9.2 billion USD) in textile components to the EU alone in 2012, equating to approximately one third of total EU imports of textiles.

Finally, the yarn-forward rule lends itself to effective Customs enforcement as Customs agents can track production activity and do not have to verify elusive value determinations that are easily manipulated as under a value-added rule of origin.

#### **Market Access Provisions**

It is critical that sensitive tariff lines be given protracted phase-outs under the market access provisions. U.S. producers must have an adequate opportunity to adjust to the duty-free treatment that will be afforded under this agreement.

USIFI members paid an inordinate price under the KORUS agreement, which gave immediate duty-free entry into the U.S. market for highly sensitive technical yarns and fabrics such as weft insertion knit fabrics and vinyl coated yarns. It is our sincere hope that the mistakes in KORUS will not be replicated in either TTIP or the pending TPP agreement.

USIFI will prepare a detailed list of sensitive tariff lines and provide that list to USTR and the U.S. Department of Commerce as the negotiations progress. We also will communicate our product sensitivities to the Committees on Ways and Means and Finance respectively.

#### **Strengthened Customs Enforcement Provisions**

Obviously, an agreement of this nature is only as sound as its enforceability. With billions of dollars in duty savings in play, there is always an enormous incentive to circumvent the terms of the final arrangement through fraudulent activity. Consequently, the TTIP should include provisions that allow for adequate Customs cooperation among all of the countries. Moreover, expanded Customs resources will be needed to ensure that our government can effectively deal with the challenges posed by this multi-national trade agreement.

#### **Government Procurement**

JSIFI notes that the U.S. government already has made significant market access concessions in the area of government procurement to the 27 member nations of the European Union as a signatory to World Trade Organization's Agreement of Government Procurement (GPA). Consequently, USIFI urges the United States to leave the U.S. exceptions in the GPA unchanged as they cover a number of sensitive items, including textiles procured by our armed services.

With respect to the GPA, USIFI's highest priority is that the United States should not make any concession that would eliminate or create exceptions to the Berry Amendment as part of any TTIP.

United States Annex I stipulates that the GPA does not apply to a number of purchases for the Department of Defense (DOD), including, (a) All elements of Federal Supply Classification (FSC) 83 other than pins, needles, sewing kits, flagstuffs, flagpoles, and flagstaff trucks and (b) All elements of FSC 84 other than subclass 8460 (luggage). FSC 83 and 84 cover nearly all textile and clothing products.

The DOD exceptions in Annex I allow the United States to retain the Berry Amendment (U.S.C. Title 10, Section 2533a), a provision, with some exceptions, that requires the Department of Defense to procure textile and clothing products made with 100 percent U.S. content and labor. This statute ensures that America's armed services will have continuous access to a robust manufacturing base for the high performance technical textiles and clothing used by our soldiers, airmen, and sailors. We estimate that Department of Defense spending on textiles and clothing has averaged in the \$1.5 to \$2 billion plus range annually during the past decade.

With fierce competition for contracts, the Berry Amendment has spurred substantial innovation in the area of military textiles by domestic manufacturers. These innovations have helped America's textile manufacturers stay at the forefront of the cutting edge of technical textiles, boosting employment and exports.

Annex I and Annex 2 contain other exceptions that USIFI strongly believes that the United States should preserve as part of any TTIP. In Annex I, with respect to the Department of Homeland Security (DHS), the GPA does not apply to procurement by the Transportation Security Administration (TSA). Also with respect to DHS, the national security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard. Procurement by the Federal Aviation Administration is exempted as are the shipbuilding activities of NOAA and the procurement activities associated with safeguarding nuclear materials and technology. The U.S. Notes to Annex 2 stipulate that the GPA shall not apply to any procurement made by a covered entity on behalf of non-covered entities at a different level of government (note 4) or to restrictions attached to Federal funds for mass transit and highway projects (note 5).

Geosynthetics used in construction, underground fuel tank liners, safety suit materials and marine fabrics are just a sample of the textile products annually procured by Federal agencies and spending programs not covered by the GPA. Spending on these procurements runs in the hundreds of millions of dollars on an annual basis.

The exceptions in Annex I allowed the United States to include a Berry-like provision in the 2009 stimulus bill that applied to funds expended on textile and clothing by DHS for the TSA and Coast Guard. The now-expired stimulus provision is important as an example of how "buy American" statutes can be applied to entities not covered by the GPA to boost U.S. employment.

Because of the potential job-creating importance of having the flexibility to apply stronger "buy American" statutes to entities not covered by the GPA, USIFI urges the United States to retain the exceptions included in Annexes 1 and 2 for TSA, the Coast Guard, FAA, NOAA, safeguarding nuclear facilities and technology, non-covered entities at a different level of government, and Federal funds for mass transit and highway projects.

### Regulatory Barriers

USIFI is deeply concerned by the potential use of excessive regulation as non-tariff barrier by the EU. The EU's REACH chemical regulations can hinder U.S. textile exports, especially if based on incomplete or faulty data. Duplication of effort by government and industry in the testing, assessment, and evaluation of chemicals used in textile products on both sides of the Atlantic is also a concern. Any TTIP should work to harmonize health, safety and environment regulations, or at a minimum, provide for reciprocal recognition of testing procedures and assessments.

### Value-Added Tax

Another major concern is how the agreement will deal with value-added taxes (VAT). EU-member nations pioneered the VAT. In addition to being assessed at each point of value added, a VAT is assessed on top of all tariffs and other duties paid. The VAT distorts trade because it is assessed on imports and rebated on exports. This has the effect of stimulating exports and suppressing imports, especially when trading with a country that does not have a VAT, like the United States. The average VAT rate in the EU exceeds 21 percent. In 2008, the distortion to U.S. trade with the EU as a result of VAT assessments and rebates was an estimated \$171 billion. U.S. exporters of goods and services were hit with an estimated \$79 billion in VAT assessments upon entry into EU markets while EU countries rebated an estimated \$92 billion in taxes to their producers upon export to the United States. Any future U.S. free trade agreement should include a VAT remedy to eliminate this massive tax disadvantage for U.S. producers.

### Conclusion

In summary, with sound rules, the TTIP holds potential for our members to see considerable benefits through increased exports to the European Union. However, if there is a departure from yarn forward or other key textile provisions, or if the agreement opens up U.S. government procurement, the TTIP will cause the loss of additional valuable manufacturing jobs in our high-tech industry in the United States. Consequently, it is critical that the basic recommendations listed above be fully adopted as part of the U.S. negotiating position.

We appreciate this opportunity to provide input and thank you for your consideration of USIFI's views. Moreover, it is our strong desire to continue working with your team as the TTIP negotiations progress.

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**MATERIAL SUBMITTED FOR THE RECORD**

**Questions for the Record**

**HOUSE WAYS AND MEANS COMMITTEE HEARING  
SUBCOMMITTEE ON TRADE**

**MAY 16, 2013 HEARING**

**“U.S.-EU Trade and Investment Partnership Agreement”**

QUESTIONS FOR THE RECORD

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**Questions for the Record: Congressman Adrian Smith**

The EU is lacking accountability in its regulatory process. I share concerns about the non-science-based restrictions placed on a variety of agriculture goods, but a comprehensive agreement between the U.S. and the EU represents an unprecedented opportunity to establish objective, internationally-recognized standards.

Mr. Grueff, as you mentioned in your testimony, Geographical Indications are viewed by many U.S. industries as another significant barrier to accessing the EU market, yet we hear from the Europeans GIs must be included in negotiations. You also mentioned the possibility of omitting SPS negotiations from an immediate agreement.

-Have Geographical Indications resulted in market access barriers to U.S. products in European markets?

-Has a lack of GI protection in the U.S. resulted in market loss for EU products? If so, please provide examples.

Mr. Grueff, does it make sense for an agreement to address Geographical Indications without addressing concerns surrounding regulatory inconsistency and non-tariff barriers faced by U.S. industries?

**Questions for the Record: Congressman Charles Rangel**

**Skilled Workers and TAA**

1. Question for Ambassador Eizenstat:

You mentioned not only the importance of worker mobility, but more broadly the need for the United States to have more skilled labor. You further mentioned community colleges as a mechanism for improving the skills of our people. Yet the fate of Trade

Adjustment Assistance – which includes a program for community colleges to fill the education and skills gap of workers in trade impacted communities – is unclear.

Some of the key improvements to the Trade Adjustment Assistance program expire at the end of the year. Do you support a full and long reauthorization of that program?

#### Accounting Standards

##### 2. Question for Ambassador Eizenstat:

You stated that GAAP and international accounting standards both adequately protect investors, and that corporations should not be required to file “costly reconciliations.” In your oral testimony, you indicated that the costs of such reconciliations for European companies here and U.S. companies in the EU may amount to \$2 billion per year. However, in 2008 the SEC eliminated the reconciliation requirement for foreign private issuers that use International Financial Reporting Standards (IFRS). (73 Fed. Reg. 986 (January 4, 2008))

Please explain whether the \$2 billion per year cost estimate takes into account the fact that foreign private issuers are no longer required to file reconciliations with the SEC as long as they use IFRS. In addition, please explain whether U.S. companies that use U.S. GAAP are required to file reconciliations in the EU.

##### 3. Question for Ambassador Eizenstat:

In your oral testimony, you indicated that international accounting standards “adequately protect” investors. However, that view is not universally held, predominantly because IFRS is seen as giving financial preparers greater flexibility than U.S. GAAP. The SEC has for many years evaluated whether to adopt IFRS. In a staff report issued last summer, the SEC explained the complexities associated with doing so and identified some of the criticisms of IFRS. These criticisms included that IFRS is more subjective, less specific, and less auditable. (SEC Work Plan for the Consideration of Incorporating IFRS into the Financial Reporting System for U.S. Issuers, Final Report, July 13, 2012, at 27.) Canada adopted IFRS, sparking comments from a Canadian forensic accountant that IFRS is “ugly for investors” (“Want a Mess, Use IFRS. Warns Rosen,” Donalee Moulton, thebottomlinesnews.ca) because there “are all sorts of holes . . . where you could pull a dirty trick, which you could not do under US accounting . . .” (“New International Accounting Rules Opens Door to Fraud,” therealnews.com) There is also concern that the development of IFRS standards has been subject to political interference by the European Union. (*The IAS 39 “Carve-Out”: How the European Union Hedged Its Exposure to the International Standard on Derivatives and Hedging*, Stanford Graduate School of Business, Case A-191, 5/1/05 (rev’d 2/07/07)).

Given the accounting scandals of the past decade, shouldn't we avoid giving accountants even greater flexibility in financial reporting?

4. Question for Ambassador Eizenstat:

The Spanish trade minister has stated that the free trade agreement should be a vehicle for harmonizing accounting standards. (Inside U.S. Trade, May 3, 2013, p. 3.) However, the International Accounting Standards Board (which promulgates IFRS) and the Financial Accounting Standards Board (which promulgates U.S. GAAP) are already working together on a number of convergence projects; indeed, they just issued, jointly, a new proposal on accounting for leases. (Exposure Draft: Leases (Topic 842), May 16, 2013, [www.fasb.org](http://www.fasb.org))

Given the concerns over IFRS described above, and the ongoing work on accounting standards convergence, what in your view would be gained by using TTIP to address accounting standards?

**Questions for the Record: Congressman Earl Blumenauer**

**Trade Agreement Challenges to Dodd-Frank**

1. Question for Mr. Slater

In December of 2012, the U.S. Chamber of Commerce sent a letter to then-U.S. Trade Representative Ron Kirk requesting that the Administration review the draft Volcker Rule to determine if it “undermines U.S. trade policy and whether the Volcker Rule, as drafted, violates our World Trade Organization and free trade agreement commitments.” (December 10, 2012 Letter from David Hirschmann and Myron Brilliant, U.S. Chamber of Commerce, to Ron Kirk, U.S. Trade Representative.)

Does the Coalition of Services Industries support using international trade agreements to which the United States is a signatory as a vehicle for challenging any part of Dodd-Frank, including implementing regulations?

2. Question for Ambassador Eizenstat and Mr. Slater:

It is our understanding that the financial services industry is looking to relax the prudential measures exception that is standard in our free trade agreement text – that is, to make it more difficult for a party to defend a regulation as being prudential and therefore exempt from challenge under the agreement.

I understand that a weakening of the exception might facilitate cross-border trade in financial services in the short-term, but wouldn't another global financial crisis be harmful to international trade flows, not to mention our economy more generally?

#### **Banking Regulations**

##### **3. Question for Ambassador Eizenstat and Mr. Slater:**

EU Commissioner for Internal Markets Michel Barnier has criticized the Federal Reserve's proposal to impose capital requirements on EU banks located in the United States – even though European banks such as Barclays, Royal Bank of Scotland, Deutsche Bank, UBS, Credit Suisse, Bank of Scotland, BNP Paribas, Dexia, Dresdner Bank, and Société Générale tapped the Federal Reserve's emergency programs during the financial crisis. (Report GAO-11-696, p. 131.) The EU has neither deposit insurance nor resolution authority, suggesting that the United States could once again be asked to bail out European firms.

Should a free trade agreement be used to exempt EU firms in the United States from the same regulations that apply to U.S. firms in the United States? If we were to include financial regulations in the discussions, how would we guard against allowing the EU to horsetrade deregulation of our financial industry against gains in other sectors? Should prudential financial regulations be exposed to such horsetrading?

##### **4. Question for Ambassador Eizenstat and Mr. Slater:**

Commissioner Barnier has also criticized the Commodity Futures Trading Commission's proposal to extend U.S. derivatives regulations to U.S. branches operating overseas.

Should a free trade agreement serve as a vehicle for the European Union to channel its demands that U.S. regulators not regulate U.S. entities abroad -- even if those entities could pose systemic risk to our financial system?

##### **5. Question for Ambassador Eizenstat and Mr. Slater:**

In your testimony, you argued that financial services should not be excluded from free trade agreement discussions with the Europeans. However, the Administration has indicated not that financial services should be excluded, but rather that their inclusion should be to same extent as in prior FTAs.

In that context, the question is not whether financial services should be included, but whether our negotiators should go beyond the framework in our existing FTAs and

subject financial services regulations to discussions on convergence, equivalence, or mutual recognition.

Numerous fora now exist to allow regulators to discuss pertinent financial services policies and regulations. These include the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the International Association of Insurance Supervisors, and the U.S.-EU Financial Markets Regulatory Dialogue.

Given the existing mechanisms for discussing financial regulation on a bilateral and global basis, as well as the concerns outlined in the prior questions about the EU's views on U.S. prudential regulations, what would be gained by including this subject in free trade agreement negotiations?

